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THE

SOLICITORS' JOURNAL

VOLUME 104

NUMBER 11

CURRENT TOPICS

Liberty of the Subject

On Monday the House of Lords gave a first reading to a Bill which, despite its prosaic title of the Administration of Justice Bill, in its final form may be destined to rank as a rider to Magna Carta and the Bill of Rights as a bulwark in defence of the Englishman's liberty. The Bill abolishes the need to obtain the Attorney-General's fiat before an appeal may be taken from the Court of Criminal Appeal to the House of Lords, and permits appeals in criminal cases to the House of Lords from divisional courts. However, an appeal from either court will lie only if that court certifies that a point of law of general public importance is involved in the decision and leave to appeal is given by it or the House of Lords. It would be more appropriate for there to be an automatic right of appeal from a decision on a criminal application for habeas corpus, if necessary by providing a right to an appeal to the Court of Criminal Appeal in such a case. General provision is made for appeals in cases of contempt of court, whether civil or criminal. An appeal will lie to the appropriate court specified against any finding that a person has been guilty of contempt or against any order made against him, and against a refusal of an application for committal or attachment. The Bill provides that a person is not to be guilty of contempt of court for publishing or distributing matter calculated to interfere with the course of justice if he can show that he did not know that proceedings were pending or that the publication contained such matter. The law governing reports of proceedings in chambers and other proceedings in private will be clarified; publication of information about certain stipulated proceedings will constitute a contempt of court. In certiorari proceedings the High Court will be empowered to pass the sentence which the court below had power to impose in addition to its present power of quashing a sentence; this is a desirable additional power in the interests of justice.

The Harman Report

The Report of the Committee on Chancery Chambers and the Chancery Registrars' Office (Cmnd. 967, H.M.S.O., 2s.) is not the radical document which some hoped for but few expected. The chief question which the Committee were asked to answer was whether it would be in the interests of efficiency and economy that Chancery Chambers should be amalgamated with the Chancery Registrars' Office: the Committee advise against this, but recommend that the Chief Master should be the administrative head of both departments, that in addition to the Chief Master there should be six masters in two groups of three, and that in addition

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to the Chief Registrar there should be three registrars and four qualified principal clerks to be known as assistant registrars. Coming down closer to earth, the Council of The Law Society proposed to the Committee that to reduce the delay which now exists in drawing up orders made in the Chancery Division, the solicitors having carriage of the order should be responsible for drawing it up unless the judge or master otherwise directed, but the Committee reject this proposal, except so far as purely procedural orders are concerned. We are encouraged by the news that the registrars "would like to experiment with dictaphones and photographic copying apparatus" and are impressed by the Committee's opinion that "the telephone cannot, any more than can the typewriter or the typist, be excluded from the modern office." We sympathise deeply with the wish of the masters to exclude the telephone and "to maintain the quiet asylum in which they live." The telephone can be overrated as an aid to efficiency but we agree with the Committee that there is "no reason why an application to restore a summons or to make a fresh appointment on some interlocutory matter should not be made in this way." We shall be publishing a critical commentary on the Report very shortly.

Legal Aid in Criminal Cases

THE March *Law Society's Gazette* contains a large amount of explanatory matter and glosses on the four orders governing costs in criminal cases which we summarised on p. 176 last week. Clearly the new scales are an experimental compromise but equally clearly they are so much better than the present fees that no one will complain about either the compromise or the experiment. In addition, to deal with the exceptional case, there is an escape clause which can be invoked without applying to the trial judge. The experiment will go on for twelve months at the end of which the HOME SECRETARY will be ready to review the regulations in the light of any recommendations made to him by a working party he is appointing. The men who are worrying most about all this are the clerks of assize and the clerks of the peace and their staffs who are to add the task of taxing the costs on defence certificates to their other duties. Clerks to magistrates, however, are pleased because Area Committees of The Law Society will assess the costs on legal aid certificates. The president asks all solicitors who accept certificates to keep careful records so that the Council may ensure that the working party is fully informed. Another relevant order is to come into operation on 14th March. This is the Poor Prisoners' Defence (Legal Aid Certificate) (Recovery of Costs) Regulations, 1960 (S.I. 1960 No. 336), which were made on 1st March and laid before Parliament last Monday. They provide for the payment to The Law Society of sums paid under an order for costs made in favour of a person who has been granted a legal aid certificate giving him free legal aid in criminal proceedings in the magistrates' courts. There is no question of any contributions being paid by defendants in criminal cases.

Claim Certificates

BETWEEN initial advice and the start of proceedings usually lies negotiation. Section 5 of the Legal Aid and Advice Act, 1949, provides for legal aid in negotiation and according to the March *Law Society's Gazette* the LORD CHANCELLOR intends to bring it into operation on 28th March next. A person will be eligible to be granted a claim certificate if his maximum contribution is determined at not more than £25 provided he has reasonable grounds for taking steps to assert or dispute a claim, and it is reasonable in the circumstances that he should receive legal aid. A common form is being introduced to cover applications in respect of a claim and in respect of proceedings. Local secretaries will have power to grant (but not to refuse) applications for claim certificates. The opportunity is being taken to make various amendments to the Legal Aid (General) Regulations, 1950, which are being consolidated into the Legal Aid (General) Regulations, 1960. The full details of all the amendments are in the *Gazette*.

Master in Open Court

THE case of *Hesz* v. *Sotheby & Co.* (1960), *The Times*, 3rd March, is noteworthy because it is believed to be the first occasion when the proceedings before a master of the Queen's Bench or Chancery Divisions have been reported in the Press. This case came before Master DIAMOND as a reference to determine the value of a picture and neither the master nor counsel appearing before him were robed at the hearing. It concerned a picture which the defendants had lost after it had been taken to them by the plaintiff, a Hungarian refugee, to be sold. The plaintiff had issued a writ for the return of his picture, which he alleged was by Jan Breughel and was worth £1,525. The matter had been referred to Master Diamond after another master had held that the plaintiff was entitled to damages to be assessed after proceedings for summary judgment had been taken under Ord. 14 of the Rules of the Supreme Court. The master accepted the plaintiff's evidence that he had paid 55,000 Hungarian florins for the picture, but he would not assume in the plaintiff's favour that he had perhaps the only existing Velvet Breughel on canvas. He concluded that the painting was one on canvas by the Dutch school and accepted that it had been seen by an expert in January, 1957, who decided it was not fit to be included in a good sale. The master estimated its value at £50. He pointed out that it was through Sotheby's desire to help the plaintiff that they accepted this picture of small value for sale and so found themselves in their present position.

Second-hand Car Sales

FROM 15th March a purchaser of a second-hand car, before buying, will be able to inquire through his nearest Citizens' Advice Bureau whether the vehicle is registered by H.P. Information, Ltd., as being the subject of a hire-purchase agreement. This was announced in the Commons on 3rd March and the inquiry facilities have been made at the request of the Board of Trade. It is good that a search of this type will be available in the future because, generally speaking, those least able to afford such a loss suffer most from the possibility of losing both car and money if the purchased car proves to be the subject of an undischarged hire-purchase commitment. We understand that the service will be free of charge and that an applicant will have to complete a form in which he will give a declaration that he is the prospective purchaser of the vehicle in question. A problem now is to publicise the new facilities adequately and to succeed in persuading potential victims to use them. Although the new service should reduce the risks involved in making second-hand purchases of cars, it will not altogether eliminate them because the register is not comprehensive.

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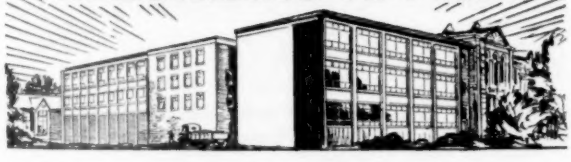
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SPECIFIC PERFORMANCE OF EXECUTORY CONTRACTS

It appears to be clear on the authorities that where a promisor commits, or evinces conduct which constitutes, an anticipatory breach of an executory contract then the other party to the contract, the promisee, is put to his election either to treat the breach as bringing the contract to an end so far as the further obligations of either party are concerned, leaving it in existence solely in so far as is necessary for the purpose of quantifying damages, or to affirm the contract, keeping it in being for the purposes of future obligations both of the promisor and of himself. If he adopts the latter course, then the contract remains in being for all purposes, but that does not mean that the promisee must treat the anticipatory breach as not being a breach at all; all that he is doing by electing to keep the contract in being is to say that he does not treat the anticipatory breach as one going to the root of the contract. Support for the foregoing is to be found in *Hochster* v. *De La Tour* (1853), 2 El. & Bl. 678, *Frost* v. *Knight* (1872), L.R. 7 Ex. 111, and *Johnstone* v. *Milling* (1886), 16 Q.B.D. 460. It is, however, obvious that in a case where a promisee has elected to affirm the contract he cannot sue for damages for failure to perform it until the time stipulated in the contract for performance has gone by without performance. Can he in such circumstances—that is, before the time for performance of the contract has arrived—sue for specific performance of it? In other words, will a court of equity grant a decree of specific performance in a case in which no complete cause of action for damages can be shown to exist? The answer to this interesting and important question, which well illustrates the elastic qualities of the court's jurisdiction in equity, does not appear hitherto to have been given conclusively by any English authority.

Hasham v. *Zenab*

The matter came, however, as a clear-cut issue before the Judicial Committee of the Privy Council recently in an appeal from a decision of the Court of Appeal for Eastern Africa (*Hasham* v. *Zenab* (*as legal representative of H. G. Harji*) [1960] 2 W.L.R. 374; p. 125, *ante*). Briefly, by the terms of a written contract the defendant, a widow, had agreed to sell to the plaintiff a two-acre plot of land with buildings thereon in Nairobi for Shs. 100,000. The contract, which the defendant signed on 19th February, 1954, provided for payment of a deposit of Shs. 15,000 at once, and the balance of the purchase price on presentation of documents of title to be executed by both parties within six months from the date of the contract. The defendant did not understand English—the language of the contract—and when she was given to understand, immediately after having signed it, that it referred to a two-acre plot, she at once repudiated the contract, and there and then tore it up, on the ground that she had only agreed to sell an area of half an acre. It was in those circumstances that the plaintiff on 2nd July, 1954, between six and seven weeks before the last day for completion—19th August—instituted proceedings claiming specific performance of the contract. It was contended on behalf of the defendant that the plaint was issued prematurely on the ground that the plaintiff, having elected to affirm the contract (instead of treating the anticipatory breach as putting an end to it so far as the future obligations of either party were concerned), kept it in being for all purposes, and the anticipatory breach by the defendant (which would, if accepted as a breach, have afforded a cause of action for damages) would not avail the plaintiff to support a claim for specific performance. He must, it was submitted, wait until there had been a failure to perform the contract within the period fixed thereby, notwithstanding that the defendant had previously intimated her refusal to do so.

No authority for that proposition was cited, "but," said the Judicial Committee (Lord Tucker, Lord Denning and Mr. L. M. D. de Silva) in a judgment delivered by Lord Tucker, "it is true to say that there is no express decision in any English case to the contrary." In the result their lordships affirmed the decision of the court below and held that a decree for specific performance had been rightly made in the circumstances of this case by the trial judge. The fallacy in the submission for the defendant, the Board pointed out, consisted in equating the right to sue for specific performance with a cause of action at law; in equity, they said, all that is required is to show circumstances which will justify the intervention by a court of equity; a purchaser had an equitable interest in the land and could get an injunction to prevent the vendor disposing of the property. The first of the forms in vol. 3 of the seventh edition of Seton's Judgments and Orders, at p. 2136, was clearly suitable to a case where the time for performance might not have arrived even at the date of the order. In such a case, added their lordships, in the event of subsequent non-performance, the court would not require the issue of a fresh writ before making the consequential directions for performance. A court of equity will, of course, do its utmost to ensure that no injustice results from its orders, and will not compel a party to perform his contract before the contract date arrives, "and," said the Board, "would give relief from any order in the event of an intervening circumstance frustrating the contract."

Agreement with Canadian authorities

Although, as indicated, there appears to be no conclusive English case which bears directly on the question, the view of the Board accords with the decisions in two Canadian cases which are indistinguishable in principle from the present case. In the first, *Roberto* v. *Bumb* [1943] 2 D.L.R. 613, it was expressly held that, where a vendor of land repudiates liability under a contract of sale, a claim for specific performance made by the purchaser in an action instituted before the date fixed for completion will be allowed. In that case the action was brought a week before the date fixed for completion, and in the Court of Appeal of Ontario, Laidlaw, J.A., said: "I think that a court of equity would not permit an appellant to avoid the contract merely because the action was started prematurely, nor would the respondent be thus deprived of his equitable right to a decree of specific performance, if he were otherwise entitled to it." The other Canadian case, *Roy* v. *Kloepfer Wholesale Hardware and Automotive Co., Ltd.*, in which the trial judge was affirmed in the Court of Appeal, and by the Supreme Court of Canada on further appeal ([1952] 2 S.C.R. (Can.) 465), was also clearly to the same effect, and the action was held not to have been brought prematurely. In the latter case comment was made on the statement in Halsbury's Laws of England, 2nd ed., vol. 31, p. 401, para. 468, that "Where one party has by words or conduct evinced an intention no longer to be bound by the contract, the other party is entitled to treat

the words or conduct as a repudiation . . . in such cases neither party can claim specific performance," words which, in the light of the instant decision of the Judicial Committee, at least appear to require some qualification.

The argument for the plaintiff in the present case, accepted by the Board, was that there was no basis in principle or authority for the defendant's proposition, and as regards authority, reliance was placed on the above-mentioned Canadian cases, and also on the view expressed in Williams on Vendor and Purchaser, 4th ed., vol. 2, at p. 1001—"which is entitled to considerable respect in the absence of authority"—that "the equitable jurisdiction to order an agreement to be specifically performed is not limited to the cases in which at law damages could be recoverable." So far as principle is concerned, it was pointed out that there is no immediate finality about an order for specific performance, for there are really two parts to specific performance, the first being little more than declaratory, the second being the issue of consequential directions; in short, the court could declare that the contract ought to be specifically performed, and if the time for performance had not yet arrived it would not at the moment make any consequential directions, but give each party liberty to apply for such directions when the time for performance did arrive. That view, which is in line with the decision of the Board, is obviously the logical solution and, subject to the safeguards indicated as above by the Board, can work no injustice. Apart from its near novelty in this country, the point is of additional importance since the principle would appear to be applicable to a variety of executory contracts, and the case will undoubtedly receive consideration in equity text-books.

C. C.

OBTAINING A GRANT: WHAT WENT WRONG?—III

In the two previous articles on this subject (pp. 153 and 180) I have sought to draw attention to some of the mistakes which can be made in drafting the oath and bond to lead to a grant of probate or letters of administration. It is also most important that any will or other testamentary document, which has been made by the deceased and which is to be proved, should first of all be carefully inspected for defects. If any are found, steps should be taken to provide a satisfactory explanation or, alternatively, the registrar should be asked for his directions on the matter. In the paragraphs which follow I describe the most common of the defects to which regard must be had and the sort of explanation which will be required.

The attestation clause

There is no prescribed form of attestation clause but, however it is worded, it must indicate beyond any doubt that the testator signed or acknowledged his will in the presence of two witnesses, all three being present together, and that each witness thereupon signed the will in the presence of the testator. If there is no clause or if the clause is deficient, an attempt must be made to obtain evidence of due execution. It is therefore important to check the wording of the attestation clause very thoroughly. Doubt often arises where the testator has used a printed will form and has neglected to complete the spaces in the clause. If alternative words, e.g., "in his/her presence," have not been deleted, or unimportant spaces have been left blank, e.g., "in h presence," no evidence will be required. Similarly, if the clause reads "Signed by the said testator" followed by a space for the insertion of the deceased's name, which has been left blank, evidence is usually unnecessary. However, when the clause reads "Signed by the said" followed by a blank space, evidence will usually be necessary to show that the deceased signed the will, unless it can be inferred from other words in the clause that the deceased must have signed in the presence of the witnesses. It is not sufficient for the clause to recite that the witnesses signed the will at the request of the testator if it does not also show that they signed in his presence. The witnesses are not required to sign in each other's presence.

The position of the deceased's signature

The position of the deceased's signature in the will may sometimes raise a doubt that the will was properly executed. If the only signature on the will has been placed in the testimonium clause or in the attestation clause, evidence as to due execution will always be required. A signature appearing below the signatures of the witnesses raises a presumption that the deceased signed after the witnesses signed. Evidence will therefore be necessary unless there is something further appearing on the face of the will which is sufficient to rebut this presumption. For instance, in some printed will forms, a row of dots has been printed underneath the attestation clause as an invitation to the testator to place his signature there; in other will forms the word "Signed" followed by a row of dots appears below the attestation clause. Sometimes the text of the will has ended so close to the space allowed for the witnesses' signatures that there has been no room for the testator to sign except at the very bottom of the will; in such a case, however, it is advisable to ask the registrar beforehand whether he will require evidence as to due execution. The fact that the deceased has signed his will twice does not of itself require any explanation, but if evidence of execution is required for some other reason, the witness should be asked to state which of the two signatures was made in execution of the will. If there is no signature on the will itself, but the deceased has signed his name on the endorsement, the will may be treated as invalid unless it is clear from evidence of the attesting witnesses, or of some other person who was present at the time, that the deceased made his signature on the endorsement intending it to be his signature to the will and that the other formalities were duly complied with.

Evidence as to execution

Where there is no attestation clause, or the clause is deficient, or there is some other factor present which raises a doubt that the will was properly executed, an attempt must be made to obtain evidence on affidavit from one or both of the attesting witnesses, unless the defect has been expressly referred to in a properly executed codicil. Usually the evidence of one witness only is sufficient, provided his recollection of the circumstances is clear. If neither witness is conveniently available, evidence should be obtained from anyone else who was present at the time the will was executed. The affidavit should describe the entire circumstances of execution. In addition, the deponent should be asked to deal, when appropriate, with the particular defect. Thus, it should be shown that the deceased signed in the attestation clause, or the deponent should explain how the signatures of the

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witnesses came to be placed above that of the deceased. When tendering the affidavit of a person other than one of the attesting witnesses, it should be explained why the witnesses have not been contacted.

When the attesting witnesses are dead or cannot be traced, and no other person can be found who was present at the time of execution, it is necessary to produce evidence sufficient to raise a presumption in favour of due execution of the will. This may take the form of an affidavit by a disinterested person identifying the signature of the deceased on the will, together with any part of the will written by the deceased, as being in the deceased's handwriting. It is within the discretion of the registrar to accept an affidavit as to the deceased's handwriting which has been sworn by the applicant if, for instance, it is shown that the applicant is the only person who would be entitled to the deceased's estate were the will not to be admitted to probate. It should be sworn that the evidence of the attesting witnesses cannot be obtained and that no one else is known to have been present at the time of execution, or as the case may be. It is advisable also to state who are the persons who would be prejudiced by the will being proved, and to obtain their consents if they are *sui juris*. If no one can be found to identify the deceased's handwriting, an attempt should be made to obtain evidence identifying the handwriting of the attesting witnesses.

When a will contains the signatures of the deceased and of at least two witnesses but it is apparent from the evidence of the witnesses, or of anyone else present at the time of execution, that the will was not properly executed, the registrar should be asked to mark the will "probate refused." The application to the registrar should be supported by the affidavits of both, or one, of the witnesses. It is advisable to obtain the evidence of both witnesses if they are conveniently available. Each witness must depose so far as he is able to the exact circumstances in which the signatures of the deceased and of the witnesses came to be placed on the will. The circumstances under which a testator may be held to have acknowledged his signature are various and the facts by reason of which it is alleged that the will was not properly executed must be clearly stated. It is never sufficient for the deponent to say merely that "the testator did not sign or acknowledge his will in my presence."

The form of the deceased's signature

The manner in which the deceased has signed his will may sometimes raise a doubt as to whether he knew or understood what he was doing. This is so when the signature is by mark or seal or thumbprint, or is in a foreign lettering, or has been made by some other person at the deceased's direction, or shows signs of extreme feebleness, particularly when the deceased has made several attempts at signing. In all these circumstances, the attestation clause should have been so drafted as to refer to the full circumstances of the execution, in particular showing that the deceased either read the will or had it read to him and appeared fully to understand its contents. If the will was read over to the deceased, the clause should show who read the will and that it took place in the presence of the witnesses. If the clause is deficient in any way in this respect an affidavit as to due execution should be obtained. This should set out the reason for the signature being in that particular form, for example, where the signature was by mark, that the deceased was blind, or illiterate, or prevented from signing by physical infirmity. It should go on to show that the will was read by, or read over to, the deceased and that he appeared to understand its contents.

Alterations

If the will contains an alteration which has not been authenticated in the prescribed manner, evidence must be given to establish whether the alteration was made before or after the will was executed. Some testators have the unfortunate habit of bringing their wills up to date from time to time without troubling to re-execute them. Thus, the address may be altered to the address to which the testator has just moved, or the name of a legatee may be crossed out because he has died. Often, these alterations may be dealt with quite simply in the oath, by stating, for example, that the deceased resided at the address originally stated in the will at the date of the will but subsequently moved to the other address. It must be remembered that the registrar has a discretion to dispense with evidence where the alteration appears to be of no practical importance. Sometimes it is clear from the circumstances of the application that the alteration is unimportant, for instance, when it occurs in the part of the will dealing with the disposition of the estate in the event of the deceased's wife predeceasing him and his widow is applying for the grant. Otherwise it is desirable to provide the registrar by letter or by a short statement in the oath with such facts as will satisfy him that the alteration is of no importance.

The fact that the will is in the handwriting of two or more persons or, although it is in the handwriting of one person throughout, that it has been written in two or more differently coloured inks gives rise to the suspicion that parts of the will may have been added after execution. Sometimes it may be assumed from an inspection of the will that this is not so, for instance, if the date of execution, the last part of the text and the signatures of the deceased and the witnesses are all in the same coloured ink. Occasionally a testator will ask his executors to insert their own names in the appointment clause; this usually requires an explanation.

If the alteration is one of importance, one of the attesting witnesses, if available, should be asked to swear an affidavit stating whether the alteration was present before execution or not. Any such affidavit sworn by an attesting witness or by anyone else present at execution must depose to the manner in which the will was executed. If neither of the attesting witnesses is available or can remember, such other evidence as would throw some light on the matter should be obtained.

If no evidence is available and the alteration is important, the will must be proved without it since the presumption is that any alteration not properly authenticated was made subsequent to execution. An engrossment of the will in its original form should be prepared (in accordance with the Non-Contentious Probate Rules, 1954, r. 9) and lodged with the papers, together with any evidence which has been obtained with regard to the alteration. If there is some doubt as to when the alteration was made, then the direction of the registrar as to the form in which the will is to be proved should be obtained in advance.

Testamentary writing appearing below the deceased's signature is not usually admitted to probate. Sometimes a testator in using a printed will form has set out his wishes on pp. 1 and 2 but has mistakenly signed in the space provided on p. 1. Unless there is a sufficiently clear reference on p. 1 to the writing on p. 2 so as to include it in the will by incorporation, the writing on p. 2 must be excluded from

probate. An engrossment of the will reproducing p. 1 only should be lodged for the registrar's fiat. A fiat copy is also required if there is an unexecuted codicil to the will on the same document as the will.

An engrossment may sometimes be required if there is non-testamentary matter in the will which either follows after the deceased's signature or has been added after execution. Anything of a minor nature, such as a direction by the deceased as to cremation, does not usually call for an engrossment, but if the addition is such as to be objectionable or render the will unsuitable for photographic reproduction, an engrossment excluding it should be lodged with the papers.

The date of a will

Regard must be had to the dates appearing on the will. In particular the date of the will should be compared with the date on the endorsement. If the latter is later than the date of the will, evidence is usually required to establish the true date of execution. Moreover, if the date of the will is incomplete or missing, evidence must be produced to establish as nearly as possible the date when the will was executed. One of the attesting witnesses should make the affidavit, testifying at the same time as to the manner in which the will was executed. If one witness cannot fix the date accurately, then the other witness must be asked for his recollection. If the true facts are known to some other person, e.g., the person who placed an incorrect date on the endorsement, the registrar should be asked to accept the evidence of that person alone. If the date cannot be fixed with any certainty, then an affidavit of search for other testamentary documents should be lodged with the papers together with such evidence as is available concerning the date.

If the will bears conflicting dates, the later date is usually accepted as the true date, no evidence being required. Evidence will be required, however, if the later date appears in the attestation clause or is not near the deceased's signature, or conflicts with the date on the endorsement, or if the title of the applicant depends on the later date being the correct one.

A check should always be made to confirm that a codicil refers to the will and to any previous codicil by its correct date. If the date has been misquoted, an explanation of the mistake must be given by affidavit. This can sometimes be made by the solicitor who prepared the codicil or by his clerk. Unless it is quite clear from the explanation that there could be no other will or codicil in existence, an affidavit of search for other testamentary documents will also be required.

Incorporation

It is not always appreciated that whenever a will refers to some other document it should be considered whether that document is to be incorporated with the will. Incorporation is necessary if the testamentary dispositions of the deceased cannot be fully ascertained unless the document referred to is made part of the will, e.g., because the beneficiary or the exact nature of the benefit is declared, not in the will, but in the other document. The additional matter must be in writing, must be clearly identifiable from the will and must have been in existence before the will was executed. Thus a testator may refer in his will to a list in which he has indicated the persons to whom he wishes his various personal belongings to be given, or he may direct that part of his estate be administered on the trusts contained in, and for the benefit of persons named in, a previous settlement.

When it is quite clear that the document referred to satisfies all the conditions for incorporation, the oath should refer to the deceased's last will "as contained in the paper-writings marked 'A' and 'B'" and both documents are proved. In other cases it may be advisable to obtain the decision of the registrar before the papers are sworn. The identity of the document to be incorporated should be established by affidavit unless it is apparent by inspection of the document, e.g., a deed.

When the document referred to is a deed, it may be more convenient to ask for leave to file an examined copy of the deed, or of the relevant part of it. The contents of the deed do not then appear in the probate copy of the will, but the copy of the deed is kept with the will in the registry.

If the description in the will could be taken to refer to a document coming into existence after the will was executed, the question of incorporation will not usually arise. However, if a list or other writing is referred to in the will, and is identifiable but cannot be found, the absence of the document should be dealt with. This usually takes the form of an affidavit of search for testamentary documents, with particular reference to the list or other writing.

Occasionally a testator, bearing in mind a possible claim under the Inheritance (Family Provision) Act, 1938, will refer in his will to a previous statement in writing in which he has set out his reasons for not leaving any part of his estate to his wife or children. It is advisable in such a case for the solicitor to certify that he is satisfied that the statement is not dispositive, unless the statement itself can be produced for inspection.

Plight and condition

The will should be examined for signs that some other document has been attached to it. Thus pinholes or paperclip marks require an explanation. If the actual document is available, it is best to lodge this with the papers together with an explanatory letter. A letter by the solicitor as to the facts will also be sufficient if the marks have been made since the date of death, for instance, by reason of some person having pinned a covering letter to the will when sending it through the post. If the marks cannot be explained, an affidavit as to the condition of the will when found among the deceased's papers and an affidavit of search for other testamentary documents will usually be required.

If the will bears signs of burning or tearing or such other interference as to lead to a presumption of revocation by the testator, an explanation must be given. Sometimes it appears from an inspection of the will that, although complete in itself, the paper on which it was written once formed part of a larger piece. The testator may have torn a sheet out of a book or he may have torn off the printed page of instructions in a will form and discarded it as being unnecessary. In such cases it may be sufficient for the applicant to depose to the fact that the will is now in the same plight and condition as when it was found among the deceased's papers after his death. In other cases the evidence of an attesting witness as to the condition of the will at the time of execution may have to be obtained.

Wills executed in duplicate

If the deceased has executed his will in duplicate, then both documents should be lodged with the papers to lead to the grant. The duplicate will be examined with the original in the registry and then handed back. If only one copy of a will executed in duplicate can be found, then the absence of the other one must be explained. Destruction by the

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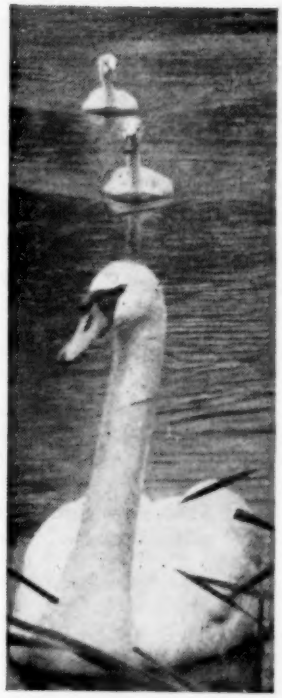
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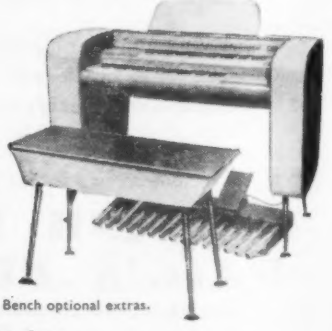
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testator of one copy of a duplicate will with the intention of revoking it is sufficient to revoke the other copy. Therefore, the finding of only one copy in the deceased's papers raises the presumption that the will has been revoked. If necessary the direction of the registrar should be obtained.

Where the deceased has executed a carbon copy as his will, there is a suspicion that he executed his will in duplicate. An explanation should, therefore, be given to account for the missing top copy. Similarly, if the word "Draft" appears on the will or on the endorsement thereto, an explanation should be provided as to the circumstances in which the will was executed. In particular, it should be shown whether an engrossment of the will was ever prepared and, if so, what happened to it.

Marking wills

When the oath is sworn the will must be marked by the applicant and the commissioner for oaths. Only the signatures are necessary; an exhibit clause is required only when the will has to be exhibited to an affidavit as to validity, execution, etc. It is advisable, if possible, to place the marking and any exhibit clause on a page of the document which does not contain any testamentary matter. This is because, if the marking or clause renders the will unsuitable for photographic reproduction, the registrar may require an engrossment of the will. Where the will and a codicil are on the same document, one marking only is sufficient.

Sometimes a will is marked by an applicant who is then prevented from proceeding with his application. On an application by some other person, the previous marking should be neatly crossed through and a letter of explanation lodged.

Where the will or an official copy thereof is in a foreign language, and a notarial or other competent translation is provided, it is the original will or official copy which must be marked, not the translation.

* * *

This ends for the time being a series of general observations on the preparation of the documents to lead to a grant of probate or letters of administration. I do not pretend that it has been a fully comprehensive account; the size of the standard text-books illustrates the complexity of the subject. It has been within my experience, however, that most of the errors which cause an application for a grant to be "stopped" at the Probate Registry are in respect of the small items with which I have dealt in this series. If, therefore, the practitioner has been helped to avoid just a few "stopped" cases, this article has served its purpose. Remember also that the most careful preparation can be spoiled by a typist's error. An extra five minutes spent in making a final check of the documents before execution may often save much time and effort later.

(Concluded) D. R. H.

DISQUALIFICATION FROM DRIVING—II

THE Road Traffic Act, 1930, s. 7 (4), provides penalties for applying for, or obtaining a licence or driving a motor vehicle on a road whilst disqualified. The defendant may elect to be tried by a jury for this offence but the prosecutor cannot ask for the case to be tried on indictment or for the defendant's committal for sentence, save where he is of an age suitable for Borstal training. If he has attained the age of sixteen but is under twenty-one, he may be committed for Borstal training under the Magistrates' Courts Act, 1952, s. 28; s. 29 of that Act (committal for sentence generally) does not apply to offences under s. 7 (4). If the defendant does elect to be tried by jury, he cannot be given a greater sentence at sessions than the magistrates could give, viz., six months' imprisonment or a fine of £50 or both (*R.* v. *Bishop* [1959] 1 W.L.R. 931). The defendant must be sent to prison for this offence unless there are special circumstances peculiar to the offence whereby a fine would be adequate (*Lines* v. *Hersom* [1951] 2 K.B. 682). "Special circumstances" means much the same as "special reasons" and includes a sudden emergency (*Aichroth* v. *Cottee* [1954] 1 W.L.R. 1124). If, however, the defendant is under twenty-one years old, he should not be sent to prison unless no other method of dealing with him is appropriate (Criminal Justice Act, 1948, s. 17 (2)), and it was held in *Davidson-Houston* v. *Lanning* [1955] 1 W.L.R. 858, that s. 17 (2) overrides the peremptory requirement of imprisonment imposed by s. 7 (4), so that a youth convicted of this offence should not be imprisoned unless there is no other method of dealing with him. If the defendant is twenty-one or over, it is submitted on the principle of *Lanning's* case that he should still not be sent to prison, unless no other method of dealing with him is appropriate, if he has not been convicted since he attained the age of seventeen of an offence punishable with imprisonment (First Offenders Act, 1958, s. 1). The offence for which he was disqualified will often itself have been punishable with imprisonment, e.g., dangerous or drunken driving, use without insurance or taking a car without the owner's consent, but it will not invariably be so, as careless driving is not so punishable on first conviction nor are offences against the terms of learner drivers' licences or of disobedience to traffic signs on first or any subsequent conviction.

The defending advocate should always be careful to see that a person charged with driving whilst disqualified was validly disqualified by the first court. A disqualification expressed to run from the day of release from prison is void (*R.* v. *Graham* [1955] Cr. L.R. 319); so would be one for a longer period than allowed by law or for an offence for which it cannot be inflicted.

Removal of disqualification

The provisions as to removing a disqualification (otherwise than on appeal) are found in the Road Traffic Act, 1930, s. 7 (3), as amended by the Road Traffic Act, 1956, s. 27.

A person disqualified may apply: (*a*) If the disqualification is for less than a year, when six months have expired from the date on which it was imposed (so that a disqualification for less than six months is irremovable under s. 7 (3)); (*b*) if the disqualification is for less than six years but not for less than one year, when one-half of the period of disqualification has expired; (*c*) in any other case, when three years have expired from the date on which it was imposed.

If removal is refused, the applicant may apply again after three months and continue to apply at three-monthly intervals. Application can be made only to the court which imposed the disqualification, though the court need not be composed of the same judge or magistrates as those who sat when it was

imposed. The procedure in magistrates' courts is for the applicant to issue a summons against the police, who may oppose the removal of the disqualification at the hearing (Magistrates' Courts Rules, 1952, r. 78). If the disqualification was imposed on indictment by assizes or quarter sessions, the applicant should notify the clerk of assize or the clerk of the peace and have a date fixed for the hearing of his application; he should also notify the police and, if he does not do so and they are consequently not represented at the hearing, it is unlikely that his application will be proceeded with (see Archbold, 34th ed., para. 2829). If, on hearing an appeal from a magistrates' court, quarter sessions impose or confirm or vary a disqualification, there is some conflict of opinion whether an application to remove it should be heard by quarter sessions or by the magistrates. In *Sherrard* v. *Woods* [1958] N.I. 13, the Court of Appeal of Northern Ireland held that where quarter sessions confirmed a disqualification imposed by petty sessions, the application to remove was properly made to petty sessions as being "the court before which he was convicted or by which the order was made"—the same words as are used in s. 7 (3) of the Road Traffic Act, 1930. Even where a disqualification is imposed for the first time or varied by quarter sessions on appeal, it would seem that the magistrates' court is the proper court to deal with the removal in view of the Magistrates' Courts Act, 1952, s. 86, which, after referring to decisions confirmed, varied or substituted by quarter sessions on appeal, provides that the decision of quarter sessions shall have effect as if it had been made by the magistrates' court against whose decision the appeal was brought (see 121 J.P. News. 819). A contrary view, however, is argued at [1955] Cr. L.R. 767 and [1956] Cr. L.R. 110.

There is no appeal against a refusal to remove but the applicant may try again after three months; the police likewise cannot appeal against a removal opposed by them. Both applicant and police, however, may bring the matter before the High Court on a point of law, as was done in *R.* v. *Manchester JJ.; ex parte Gaynor* [1956] 1 W.L.R. 280. The court cannot vary a disqualification under s. 7 (3) but only remove it or refuse to remove it (*R.* v. *Cottrell (No. 2)* [1956] 1 W.L.R. 342). The court can direct immediate removal or removal on a future date; the latter direction does not estop the court, on a further application, from directing its removal on an earlier date (*R.* v. *Manchester JJ., supra*). If disqualification has been imposed for life, as judges of assize sometimes direct, it is submitted that removal may not be granted until three years have expired since its imposition.

Time during which a disqualification was suspended or not imposed is excluded in computing a period of disqualification (Road Traffic Act, 1956, s. 27). Thus, if a man is disqualified for two years on 1st January, 1960, and immediately appeals and has the disqualification suspended till his appeal is heard and dismissed on 1st March, 1960, his disqualification will run until 11.59 p.m. on 28th February, 1962. The earliest date on which an application to remove it can be heard is 1st March, 1961.

Procedure on application to remove

On a hearing of an application to remove a disqualification, the applicant's solicitor or counsel may address the court and it is usual to call the applicant himself to give evidence why he wants its removal. The court must, by s. 7 (3), have regard to his character, his conduct since the conviction, the nature of the offence and any other circumstances of the case. It is better that the applicant should have some good reason for his request, e.g., that his family is suffering financial hardship as a result of his losing a job with driving and the prospect of a better-paid job if he can get his licence back. The court can properly ask for evidence that restoration of his licence would result in his getting a better job. The applicant can be cross-examined by the police and can call witnesses. The police can also call witnesses and address the court and the applicant can call rebutting evidence, as the application is by complaint. The applicant can be ordered to pay costs, whether he is successful or not.

(*Concluded*) G. S. W.

MEMORANDUM OF ASSOCIATION

A COMPANY'S memorandum of association is an easier document to draft than its articles, and one is apt to think of it as just a matter of inserting some ingenious and imaginative principal objects at the beginning of a printed form, and adding a figure at the end for the nominal capital. But there is a good deal more in drafting an objects clause than amusing one's clients by giving a haulage contractor power to exploit space rockets.

In the first place it is worth considering why the objects clause is usually so lengthy. The Companies Act, 1948, Sched. I, Table B, contains a specimen objects clause which is extremely short, and s. 11 requires the specimen to be followed as closely as possible. If this had been done, it would have become the practice merely to set out the company's main business, but the simple scheme of the Act has been upset by the development of the doctrine of *ultra vires*. The fact that the courts have been rather too ready to limit the powers of companies has meant that express powers have had to be inserted in the clause in addition to objects proper.

Objectionable objects

At the same time the standard forms are worth a little scrutiny. A trading company must be given express power to sell its undertaking (*Simpson* v. *Westminster Palace Hotel Co.* (1860), 8 H.L. Cas. 712), or to take up shares in another company (*Re European Society Arbitration Acts; ex parte British Nation Life Assurance Association, Liquidators* (1878), 8 Ch. D. 679), but could any court hold that it had no implied power to sign and endorse cheques and bills of exchange? Again, the client is liable to think one out of touch with reality if one solemnly confers on a small retail business the power to construct railway sidings and power stations.

There is some controversy at the moment as to whether the doctrine of *ultra vires* should be retained at all. If there is to be legislation on this point, there seems to be room for a distinction between private and public companies. The proprietors of a private company may reasonably decide to close down one business and start an entirely different one. If they do this it is an unnecessary expense to have to form a new company, and an amendment to the law, permitting

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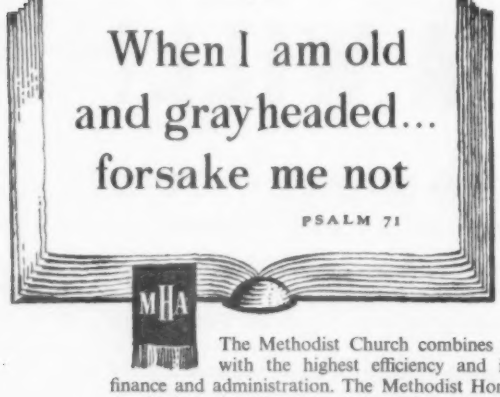
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private companies to carry on any type of activity, would hurt no one. The case of public companies is different. The shareholders may have entrusted their money to the company because they had confidence in the management of a particular business, and there can be a sense of grievance if the directors branch out into another business of which they have no special experience.

Certainly the courts are apt to construe the objects of a company in a restrictive way, and a distinction is drawn between main objects and ancillary ones, the latter being taken as subsidiary to the main objects. An express provision that each paragraph of the clause shall be deemed to contain a separate main object appears to be effective to exclude this rule of construction (*Cotman* v. *Brougham* [1918] A.C. 514).

Alteration of objects

Before 1948 the objects of a company could only be altered by leave of the court, but the position has been improved by s. 5 of the 1948 Act, which allows certain alterations to be made by special resolution. The limitations of this section should be carefully noted, because it does not authorise the adoption of completely new objects. The alterations must be connected in some way with the existing main objects, e.g., they must enable the company to carry on its business more economically or efficiently, or by new or improved means, or they must relate to a new business which can be combined with the old (s. 5 (1)). In practice alterations are often made which go beyond the precise terms of the section, and it is difficult to see how they can be challenged once the statutory procedure has been carried out.

The alteration is made by special resolution passed in the usual way, except that notice of the meeting has to be given to holders of debentures which were secured by a floating charge before 1st December, 1947. Within twenty-one days of the passing of the resolution an application may be made to the court for the alteration to be cancelled, and if this is done the alteration is of no effect except so far as it is confirmed by the court, which has wide powers to impose terms. The people to make the application are the holders of at least 15 per cent. of the shares, or of any class of shares, or the holders of at least 15 per cent. of the " pre-Act " debentures which carry a right to notice of the meeting.

If the resolution is not challenged in this way within twenty-one days of its passing, it has to be presumed that the alteration was validly made under the section (s. 5 (9)). If no application is made to the court within the twenty-one days then the company must file within the next fifteen days a complete print of its memorandum as altered; the filing of the special resolution is not sufficient.

Medes and Persians

Two clauses of the memorandum are quite unalterable. These are the statement that the registered office is in England, or Scotland, as the case may be, and the limitation of members' liability. More important in practice is the fact that rights attached by the memorandum to different classes of shares cannot be altered unless the memorandum says so (s. 23 (2)). If done deliberately the crystallisation of rights in the memorandum can be a useful defence to a minority in special cases. If done accidentally it may produce an inflexible capital structure which quickly fails to serve its purpose; as a general rule it is better to define the rights in the articles.

In the case of an investment company which does not want to pay tax on any profit it happens to make from realising property, it is essential that it should be prohibited from distributing these profits as dividend. There is some difference of opinion as to whether this prohibition should be contained in the memorandum or in the articles; probably it will sufficiently impress the inspector of taxes if it is contained in the articles alone, and it is easier to change the articles if the members later decide that a dividend is more important than the investment status of the company. Even if the prohibition is in the memorandum it is not necessarily unalterable, because s. 23 (1) allows alteration of a condition in a memorandum which could lawfully have been in the articles instead. The procedure is similar to a change of objects under s. 5, except that no debenture holders appear on the scene, and is more cumbersome than a mere change of articles.

J. P. L.

Practical Conveyancing

EXECUTION OF MORTGAGES

THE January issue of our contemporary, the *Building Societies' Gazette*, contained an interesting note by Mr. William A. Greene, the chairman of the Waltham Abbey Permanent Building Society. The consequences of a case he mentioned are likely to be of interest to solicitors and so, with his permission and that of the editor of the *Building Societies' Gazette*, we will refer briefly to the occurrence.

An application was made to a building society for an advance, and the society's solicitors prepared the mortgage deed. This was sent by post to the borrower for his signature as he lived in another town. The deed was returned purporting to have been executed by the intending borrower and witnessed in the usual manner. Accordingly, the mortgage advance was made but there was default in payment of the monthly subscriptions. No reply was received to letters written by the society to the borrower and, in due course, the solicitors for the society issued a writ.

The rather surprising consequence was that the defendant contended he had not signed either the application form or the mortgage and he had no knowledge of the transaction. It transpired that his wife had signed both the form and the deed, and all communications from the society and their solicitors addressed to the defendant had been intercepted by the wife, who had also negotiated the cheque issued by the society. It is understood that the wife was charged with forgery and sentenced to twelve months' imprisonment.

The building society were, quite understandably, advised that they had no right of action against the husband in respect of the sums due under the mortgage. In the circumstances, it happened that part of the proceeds had been used to pay off an earlier mortgage and, consequently, the husband reimbursed the society to this extent.

The loss sustained by the building society in this case appears to have caused some concern, and there has been

correspondence in the February issue of the *Building Societies' Gazette*. The question arises whether further precautions should be taken to ensure that losses of this kind do not occur.

Suggested precautions

It is significant that the mortgage was taken out some time after the purchase of the property. Probably a fraud of this kind could not be achieved if the conveyance and mortgage were simultaneous. Mr. Greene wrote that :—

> " It will be seen, therefore, how important it is to ensure that the mortgage deed is properly signed. The practice among building society solicitors in this respect seems to vary. Some, it appears, in cases of mortgagors living at a distance from their offices, send mortgages through the post for signature. Others insist on the mortgagor attending at their office to sign the mortgage, but in cases where the mortgagor is a long way away they insist on his taking the deed to a nearby solicitor, who witnesses the execution of the mortgage."

Mr. Greene's note continued by referring to the general practice of assuming, for purposes of investigation of title, that signatures are genuine, and ended with a reference to the writer's recent remarks at 103 Sol. J. 690 about the advisability of obtaining the signature of a name in full. We must point out, however, that the comments we made on this last-mentioned point were not intended to have any bearing on the necessity for witnessing a deed or on the manner in which that should be done (the need for an attestation clause was mentioned later). This remark is made because Mr. Greene's (necessarily brief) reference to the present writer's views may be misunderstood ; a letter from Mr. F. P. Dilkes, the assistant manager of the West Bromwich Building Society, published in the February issue of the *Law Society's Gazette*, gives this impression.

Mr. Dilkes' conclusion is as follows :—

> " Rather than that building societies should unnecessarily insist on mortgages being signed in full, solicitors . . . should ask that, where it is impossible for a mortgagor to attend personally to sign a deed, he should execute it in the presence of another solicitor."

The writer understands that a few building societies insist that a mortgage deed shall be witnessed by a solicitor. A widespread adoption of his rule would be very inconvenient, however, as the practice of sending mortgage and other deeds by post with proper instructions for execution and attestation is widely adopted and normally satisfactory. There is a danger that an unnecessarily rigid rule might be imposed as a result of a relatively small (and most unlikely) loss, such as that quoted by Mr. Greene. We welcome the opportunity of drawing the attention of solicitors to the danger and to the discussion in the building society movement. We consider, however, that the problem is one which arises on the execution of other documents and its solution is best left to the discretion of solicitors having regard to the circumstances of each case. It is always wise to arrange execution of a deed in the presence of the solicitor who can explain it and ensure that it is duly executed, if that procedure is reasonably practicable. But where the party is well known to the solicitor, or has personally given adequate instructions so that his intentions are clear, and the deed does not require an oral explanation, we think it would be unreasonable to insist that the party should travel a great distance to the solicitor's office, take time away from his work or otherwise put himself to substantial inconvenience. Once more we express the view which we have stated in very different contexts, that conveyancing transactions are best carried out in the manner decided by a solicitor who knows the facts and exercises an informed judgment. In making this particular decision, however, solicitors may well be influenced by Mr. Greene's illustration of a danger.

J. Gilchrist Smith.

Landlord and Tenant Notebook

VALUING A REVERSION

The Landlord and Tenant Act, 1927, s. 18 (1), did not dispose of the law laid down in *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42 (C.A.), summarised by the following passage from Lopes, L.J.'s judgment : " What is the meaning of ' good tenantable repair ' ? That expression appears to me to mean such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it." But the subsection, by which " damages for a breach of a covenant . . . to leave or put premises in repair at the termination of a lease . . . shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant . . . ," did dispose of the law laid down in *Rawlings* v. *Morgan* (1865), 18 C.B. (n.s.) 776, and *Inderwick* v. *Leech* (1884), 1 Cab. & E. 412, deciding that a landlord covenantee's rights were not affected by an intention to demolish and rebuild.

The ceiling for dilapidations is thus the diminution in the value of the reversion, and the recent decision in *Jaquin* v. *Holland* [1960] 1 All E.R. 402 (C.A.), occasioned examination of the questions : what is a reversion ; how is one to value a reversion ; and what (if any) is the effect of a housing shortage on the assessment ?

Immediate re-letting

The plaintiff in the case had let the defendant a bungalow for the term of one year (rent £265), the agreement including clauses by which the defendant undertook to keep and deliver up the interior of the premises in repair. But when the tenancy had run for about eight months, a surrender was negotiated, the landlord having found another tenant at the same rent. The defendant left, and dilapidations surveyors acting for landlord and tenant assessed the cost of necessary repairs at £102 16s. and £91 13s. 6d., respectively. The landlord in fact laid out some £25. The claim was referred to the county court registrar, who found that the value of the reversion had been diminished, as a consequence of breaches of agreement, by £50 and that the amount expended in making the house lettable was £19 10s. ; on this finding he awarded

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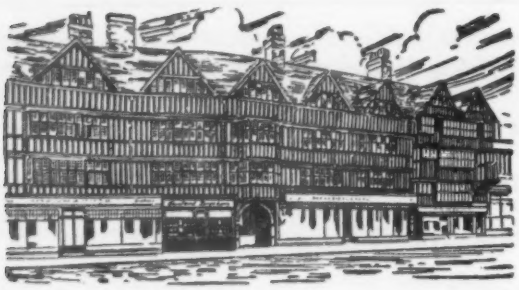
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the plaintiff the latter sum (it being, apparently, assumed that the new tenant was a reasonably minded tenant of the class likely to take the bungalow). The plaintiff appealed to the judge (as to the right of appeal, see J. K. H.'s article on "Second Helpings," in our issue of 26th February, p. 158), who held that the amount expended did not represent the diminution in value, the registrar having made a mistake in going on to consider the letting which had been made. Then the defendant appealed.

The reversion

While it was not suggested that there was nothing to value—there is, of course, always a reversion when there is a tenancy—one contention put forward on behalf of the defendant was that because the plaintiff never intended to put the property on the market, i.e., to sell the freehold, there had been no diminution in the value of the reversion. On this point Ormerod, L.J., said:

> "It appears to me that there must be a moment of time when the freehold reversion, unincumbered, is vested in the landlord, and the question is: what is the value of the freehold reversion at that time? It appears to me that the finding of the registrar that there would be a reduction in the selling price of £50 at that time does mean that there would be a diminution of £50 in the value of the freehold reversion."

It will be observed that, while in the case before the court there had been a moment of time when the freehold reversion had been vested in the landlord and was then unincumbered, the scope of the Landlord and Tenant Act, 1927, s. 18 (1), is not limited to cases in which dilapidations are claimed at the termination of a tenancy. Also that while the *Proudfoot* v. *Hart* formula contemplates a re-letting it can be applied when there is no such intention.

Evidencing value

Another point sought to be made by the appellant defendant was that the lettable value of the freehold ought to be taken into account in valuing the reversion. This led to observations by Devlin, L.J., which may be said to have dealt with (*a*) the position in general; (*b*) the position when disrepair is a factor; and (*c*) the effect of a housing shortage.

The learned lord justice said that "in one sense" the lettable value of a house was a good enough guide to what its capital value was—but that in this matter of repairs it might assume a different aspect. Taking, as an example, a £5,000 house needing £50 worth of repairs, it would be extremely improbable that a tenant, asked to take the house again for £250, would say: "No. I am only going to pay £247 10s., because I shall have to spend £50 on repairs to it." Moreover, the length of the proposed tenancy might affect the rent.

The underlying assumption that the value of the property can be ascertained by multiplying the obtainable rent by twenty may be open to question; but, apart from that, the suggestion that well maintained property will not fetch more, whether sold or let, than property in disrepair hardly sounds convincing. It is, perhaps, a pity that the court did not deal more explicitly and definitely than it did with the third point mentioned, that of the effect of the housing shortage.

Unusual demand

Much was said about the market having been a sellers' or landlords' market, counsel for the landlord contending that the registrar had been influenced in effect by the fortuitous circumstance that there had been a very great demand for houses, particularly houses to let, in the particular district. Ormerod, L.J., did not go at all deeply into this point, being content to observe that it was not correct to say that because any house let almost in any condition at the present time there was no obligation on a tenant to perform his covenant to repair: *Proudfoot* v. *Hart* was a guide, but one which called in "that useful individual, the reasonable man, acting in reasonable circumstances." Devlin, L.J., was more definite, holding that the registrar had been wrong not merely in taking the actual letting as a guide but in taking one which was only effected because of the shortage and desirability of houses at the place concerned:—

> "He has found, in terms, that the diminution of the selling price is £50. If he finds that, notwithstanding that the house can be re-let at an expenditure of only £19 10s., he must be finding that other considerations besides the diminution in the value of the reversion are affecting the tenant's mind, those other considerations being the shortage and desirability of a house in Sevenoaks. Those considerations, in my judgment, must be extraneous to the true principle on which the value should be arrived at."

This, in my submission, does agree with what is to be understood by "value." It may well be that a homeless person cannot afford to be fastidious, but the fact (if it be a fact) that a temporary excess of demand over supply enables a landlord or seller to get as much for a dilapidated house as for a well maintained one does not make the two of equal value. Circumstances which obtained near Bosworth on 22nd August, 1488, may have made it possible, at the time, to sell almost any horse in any condition, and Richard III is said to have so greatly desired one that he offered his kingdom for "a" horse, and would have been unlikely to haggle if a scruffy and perhaps temporarily lame animal had been produced. But, had business resulted, that horse would not have fetched as much at a sale next day as what would have been paid for a well groomed, sound specimen.

R. B.

SOLICITORS BENEVOLENT ASSOCIATION

At the monthly meeting of the board of directors held on 24th February, 1960, Mr. Stephen Kitching Walker, M.A., of Kirbymoorside, Yorkshire, was elected a director of the association. Twenty-two solicitors were admitted as members of the association, bringing the total membership up to 8,377. Fourteen applications for relief were considered, and grants totalling £1,369 6s. were made, £172 of which was in respect of "special" grants for holidays, clothing, etc. With a view to the urgent need for increasing the membership of the association it was decided to issue an appeal to all practising solicitors on the roll for England and Wales who are not yet subscribers to join their own professional charity. Forms of application for membership and general information leaflets will be supplied on request to the association's offices, Cliffords Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s. and a donation of £21 constitutes life membership.

TREATMENT OF OFFENDERS: CORPORAL PUNISHMENT

The Advisory Council on the Treatment of Offenders, under the chairmanship of Mr. Justice Barry, will meet shortly to consider whether there are grounds for reintroducing any form of corporal punishment as a judicial penalty in respect of any categories of offences and of offenders. Anyone wishing to submit evidence should send it to the secretary of the Council at the Home Office Whitehall, S.W.1.

Law Lecture

The KING'S COLLEGE LONDON FACULTY OF LAWS SOCIETY'S annual lecture will be given by Professor E. V. Rostow, A.M., LL.B., on "Law and Morals" at the college on Monday, 14th March, 1960, at 5 p.m. Students and others interested will be welcome.

HERE AND THERE

VILLAGE HAMPDENS

AT some time or other in our early lives we have all read with becoming emotions the lines about

> "Some village Hampden that with dauntless breast
> The little tyrant of his fields withstood,"

though a more mature acquaintance with men and affairs may later on have led us to suspect that emulators of Hampden have, quite often, been somewhat awkward customers, embarrassing in their methods to the conventional, the peace-loving and the easy-going. After all, the great original Hampden of the Civil War, who made such a pother in the courts fighting the great revenue case of Ship Money, was only assessed to the tune of twenty shillings, which, for a prosperous landowner, was by any standards but a modest contribution to the expansion and efficiency of the British Navy, even if he did happen to live in an inland county. Perhaps it would have been short-sighted of me, but I cannot imagine myself embarking on revenue litigation over so paltry a sum on the faith of a legal technicality. My own sympathies in the matter of awkwardness are far more simple and direct. My faith in the sanctity of that steadfast piece of earth which, if a man can call it his own, will be his bulwark against the envious and predatory hangers-on of the State machine, inspires in me profound sympathy with any farmer who undermines a pylon planted willy-nilly on his ground, or threatens invading workmen with dogs or shot-guns or pulls up the surveyors' pegs stuck in by those who have compulsorily removed his landmarks. Commander Martin's stand in the Battle of Crichel Down was of more significance to us to-day than John Hampden's protest before the assessors in Great Kimble Church.

HEAP OF INFAMY

BUT village Hampdens come in many shapes and sizes, and sometimes their methods recall the knockabout comedy of the old mummers rather than the stately figures of the past, pedestalled on the milestones of our constitutional history. That does not mean, however, that they are without their significance. The midden heap of three thousand years ago is the treasure trove of to-day's archæologists. So let not ambition mock his useful toil who has recently stood focused in the modified limelight of county court litigation as the Hampden of the dustbins of Bracknell in Berkshire. I forget by what honorific title the quondam dustmen of a less euphemistic time than ours are now called. Lately, you remember, they collectively rebuked a duke for what they took to be a disparaging reference to their calling and one assumes that they take a sensitive pride in their service and their work. One householder, however, living on a height significantly called Skimped Hill, believed himself to have been aggrieved by the system of refuse collection adopted by the local authority. He complained that his dustbin had not been emptied for three weeks and, at the end of that time, holding that a protest was best registered under the very noses of the responsible officials, he mounted his bicycle, balanced the bin on the handle bars and headed for the council offices. The effect produced by his approach is fortunately recorded for us in the very words of a council official, one Mr. Snook. As Macbeth, watching from the battlements of Dunsinane, saw Birnam Wood march towards him, so did this official from an upper window behold incredulously the cycling dustbin speeding towards the stronghold of civic authority. The council officials were not content, if one may so express it, to cock a snook at the approaching portent from the summit of their citadel. The cry was "Arm! Arm! and out!" But it was too late. The invader had already forced the main gate and was in occupation of the hall. "He picked up the door mat, threw it against the wall and then emptied the dustbin all over the floor." One can well understand the consternation caused by his approach, for this supreme gesture was the climax of a fourteen years' war with the Easthampstead Rural District Council during which he had declared himself the ratepayers' militant champion. "On one occasion," said the clerk to the council, in evidence, "he came into my office, got hold of my nose and twisted it. He said he hated my guts." Mr. Joe Brant remained militant to the last. At the hearing of the action brought against him by the council for damages and an injunction restraining him from trespassing on the council's premises he said, "I still honestly believe that what I did and what I have done in the past will benefit everyone who is a ratepayer of the Easthampstead Rural District Council." If robust tax-free entertainment be a benefit, he is undoubtedly right. The judge awarded 20s. damages against him. But one cherishes a dark suspicion that such a champion will feel that the satisfaction of the gesture was amply worth it. After all, 20s. is less than the price of one good seat at "My Fair Lady," less than the price of a bottle of whisky. What is such a sum beside the stimulating satisfaction of piling a heap of infamy beneath one's enemy's very nose?

RICHARD ROE.

Obituary

Mr. WILLIAM ARTHUR COLEMAN, solicitor, of Leamington Spa, died on 27th February, aged 88. He was admitted in 1894. The town's oldest solicitor, Mr. Coleman was for more than fifty years a partner in the firm of Wright, Hassall & Co. He was a member of the Council of The Law Society and chairman of its disciplinary committee until his retirement two years ago.

Mr. HENRY GEORGE GOODSMAN, managing clerk with the firm of Enever, Strong, Freeman & Co., of Chancery Lane, London, died on 27th February.

Sir ARNOLD PERCY ROBINSON, solicitor, died on 29th February, aged 80. He was admitted in 1905. Sir Arnold went to Singapore in 1907, and was admitted to the Straits Settlements Bar and the Federated Malay States Bar in 1908. He was a senior partner in Drew & Napier, advocates and solicitors, of Singapore, until he retired in 1935.

Societies

The HARVARD LAW SCHOOL ASSOCIATION OF THE UNITED KINGDOM gave a dinner on 25th February at King's College, London, to Professor Eugene Rostow, A.M., LL.B., Dean of Yale Law School, and Mrs. Rostow. The guests included Lord Evershed, M.R.; Mr. Justice Danckwerts; Mr. John Megaw, Q.C.; Mr. G. Hesketh, barrister-at-law; Mr. Mark Myers, barrister-at-law; Mr. Philip Shelbourne, barrister-at-law; and Mr. Raphael Tuck, barrister-at-law.

The SHROPSHIRE LAW SOCIETY held its annual dinner at the Lion Hotel, Shrewsbury, on 24th February, when Mr. J. E. B. Bowdler, president of the society, took the chair. The guests of honour were Sir Eric Sachs, the visiting judge of assize, and Sir Sydney Littlewood, president of The Law Society.

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NOTES OF CASES

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House of Lords

RATING: EXEMPTION: BENEFICIAL OCCUPATION

Arbuckle Smith & Co., Ltd. *v.* Greenock Corporation

Viscount Kilmuir, L.C., Lord Reid, Lord Radcliffe, Lord Cohen and Lord Keith of Avonholm. 18th February, 1960

Appeal from the Second Division of the Court of Session ([1959] S.L.T. (Notes) 56).

By s. 222 of the Local Government (Scotland) Act, 1947, as amended by s. 16 (1) of the Valuation and Rating (Scotland) Act, 1956, the occupier of premises is responsible for paying rates, "occupier" being defined by s. 379 (1) of the 1947 Act as "any person in actual occupation of land." By s. 243 (1) of that Act the occupier is not liable for rates in respect of premises "unlet, unoccupied or unfurnished throughout the whole year" in question. The respondent corporation claimed from the appellant company rates in respect of a warehouse purchased by the appellant company on 1st March, 1957, with a view to use as a bonded store. Approval of such use by the Customs and Excise was necessary and this had been applied for, but considerable alterations in the premises were required before this could be granted and the work was carried out from 3rd March, 1958, till 16th June, 1958. The company had not previously used the premises as a warehouse. The Second Division of the Court of Session having held that at the material time the company was in rateable occupation, this appeal was brought to the House of Lords.

VISCOUNT KILMUIR, L.C., said that he was disposed to agree that the word "actual" in s. 379 (1) was used to make plain that the occupation necessary to make the occupier liable for rates was *de facto* as opposed to *de jure* occupation. Also an owner of land must have made some actual use of the premises in the relevant year before he could be called on to pay rates. The crucial question was whether it was sufficient to make alterations with the intention of carrying on a business when the alterations were completed. It was not sufficient. Activity carried on in relation to the premises with the sole object of making them fit for the only use contemplated did not amount to the kind of actual use which was essential to rateable occupation. During that time, the premises were not serving the company's purpose in the business of warehousemen. There being no use of the premises according to their nature, there was no occupation attracting liability to rates. The appeal should be allowed.

The other noble and learned lords agreed in allowing the appeal. Appeal allowed.

APPEARANCES: *Alexander Thompson*, Q.C. (of the Scottish Bar) and *Henry Keith* (of the English and the Scottish Bars) (*Rees & Freres*, for *Fraser, Stodart & Ballingall*, W.S., Edinburgh); *W. Greive*, Q.C., and *Peter Maxwell* (both of the Scottish Bar) and *W. B. Harris* (of the English Bar) (*John Kennedy & Co.*, for *The Town Clerk, Greenock*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] [2 W.L.R. 435

MASTER AND SERVANT: NEGLIGENCE: SYSTEM OF WORK: ONUS OF PROOF

Brown *v.* Rolls Royce, Ltd.

Lord Reid, Lord Radcliffe, Lord Cohen, Lord Keith of Avonholm and Lord Denning. 18th February, 1960

Appeal from the First Division of the Court of Session ([1959] S.L.T. (Notes) 73).

The appellant, having contracted dermatitis in 1954, sued his employers, the respondents, for damages, alleging that their fault caused him to contract the disease. He was employed in oiling machines in their factory from 1952 to 1955, so that his hands were constantly in contact with oil, and it was not disputed that this caused the disease. In 1940 the respondents had established a system designed to prevent oil dermatitis; this was recommended by and under the supervision of a whole-time medical officer. Doctors, giving evidence, praised it. From 1941 there was a progressive fall in the number of cases at the factory. The appellant, while not attacking the system as a whole, contended that it should have included as an essential element provision of a barrier cream called Rozalex No. 1. On the effectiveness of this cream as a preventative the medical evidence was conflicting, but there was evidence that it was of some value. Other employers commonly supplied it, but there was no evidence what other precautions they took. The First Division of the Court of Session having held that the respondents were not liable, the appellant appealed to the House of Lords.

LORD REID and LORD RADCLIFFE said that the appeal should be dismissed.

LORD COHEN said that, since the interlocutor appealed from reviewed an interior court judgment founded on proof allowed and taken, the Judicature (Court of Session) Act, 1825, s. 40, made it final as to findings of fact; it was subject to appeal only on points of law. It was contended that, on the facts found, the appellant had discharged the preliminary onus of proof of the respondents' negligence, so that the onus passed to them to show that they were not negligent, and that they had not discharged that onus. It was not right to take some findings of fact in this way apart from the others and so create an artificial division in the onus of proof. It was for the appellant to show that the respondents had been negligent and that their negligence had caused the injury. The respondents had not failed in their duty to the appellant. They passed the test laid down in *Paris* v. *Stepney Borough Council* [1951] A.C. 367, at p. 382, of "the conduct and judgment of a reasonable and prudent man." The appeal should be dismissed.

LORD KEITH OF AVONHOLM and LORD DENNING also delivered opinions in favour of dismissing the appeal. Appeal dismissed.

APPEARANCES: *F. C. Watt*, Q.C., and *J. R. Hamilton* (both of the Scottish Bar) (*Evill & Coleman*, for *Thos. J. Addly, Son & Co.*, S.S.C., Edinburgh, and *L. & L. Lawrence*, Glasgow); *M. Kissen*, Q.C., and *J. A. Forsyth* (both of the Scottish Bar) (*Claremont, Haynes & Co.*, for *Simpson and Marwick*, W.S., Edinburgh, and *Gartshore, Scott, Sons & Co.*, Glasgow).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] [1 W.L.R. 210

Court of Appeal

VARIATION OF TRUSTS: PROPOSAL BY SOLE BENEFICIARY OPPOSED BY TRUSTEES: EXERCISE OF TRUSTEES' POWERS OPPOSED BY BENEFICIARY

***In re* Steed's Will Trusts**

Lord Evershed, M.R., Willmer and Upjohn, L.JJ.

26th January, 1960

Appeal from the Divisional Court ([1959] 2 W.L.R. 470; 103 SOL. J. 273).

By his will, a testator gave and devised certain farm property to his trustees upon trust for sale upon protective trusts, as defined by s. 33 of the Trustee Act, 1925, for the

benefit of the plaintiff for life, and after her death for such persons as she might by deed or will appoint, and in default of appointment, upon trust for the persons entitled on the distribution of her estate, with a proviso that the plaintiff should have the use and enjoyment of the capital value thereof if she needed it, and that the trustees might apply capital moneys arising on the sale of the farm to or for her benefit provided that they should consider the necessity for retaining sufficient capital to prevent her from ever being without adequate means. The testator also gave to the trustees a sum of £4,000 on trust for the plaintiff on the same protective trusts, and with similar powers of appointment by the plaintiff, and for the use of capital for her benefit, and authorised the trustees to use the legacy for the purpose of providing a residence for her. After the testator's death the plaintiff, who was unmarried and had remained so, exercised both powers of appointment by deed irrevocably in her own favour. The farm was occupied by the plaintiff's brother but the trustees did not regard him as a satisfactory tenant, and came to the conclusion that the farm was not a desirable asset from the point of view of the trusts which it was their duty to administer, and that it ought to be sold. They obtained an offer and were about to sell when the plaintiff issued a writ against them, and by a summons taken out in the action she sought the court's direction that the trustees should not sell the farm. Subsequently she amended the writ and the summons, and made an application under s. 1 of the Variation of Trusts Act, 1958, for approval by the court of an arrangement proposed by her varying the trusts, so that the trustees would hold the farm and the legacy on trust for her absolutely; this the trustees did not consider would be for the benefit of the plaintiff and declined to approve. Harman, J., refused to grant the relief sought and the plaintiff appealed.

LORD EVERSHED, M.R., said that, applying the principles stated in *In re Mayo's Will Trusts* [1943] 1 Ch. 302, the court should not and would not interfere with the exercise of the trustees' discretion in seeking to give effect to the duty imposed on them. "Arrangement" in s. 1 of the 1958 Act was not limited to proposals which were *inter partes* but was used in the widest possible sense. The duty imposed on the court was not to approve on behalf of the trustees, though the views of the trustees would be considered, nor was it confined to considering the effect of a proposed scheme on the person on behalf of whom approval was sought. The plaintiff was now fifty-three and unmarried but there was this discretionary trust and a future husband of the plaintiff's was a person interested under those trusts. In was on his behalf that the court had to approve the proposal. The proposal had to be looked at as a whole to see whether it was proper to be sanctioned by the court, and the court had to have regard not only to the material benefit of the person who was unable to give his consent because he was not in a position to do so, but to the purpose of the trust. Applying that test, the court should not approve the proposed variation.

WILLMER and UPJOHN, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *G. H. Newsom*, Q.C., and *Eric Griffith* (*Field, Roscoe & Co.*, for *Pretty, Dawson & Butters*, Ipswich); *L. H. L. Cohen* (*Sharpe, Pritchard & Co.*, for *Barr & Co.*, Cambridge).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 474

HUSBAND AND WIFE: ADULTERY DENIED IN ANSWER: DENIAL VERIFIED IN AFFIDAVIT: CROSS-EXAMINATION

Corfe *v.* Corfe

Hodson, Willmer and Harman, L.JJ. 2nd February, 1960

Appeal from Wallington, J.

By her answer to a petition for the dissolution of her marriage, a wife denied the charge of adultery and her denial was verified by the affidavit in support thereof. At the trial, the wife did not deny the adultery in her evidence-in-chief, but an objection on her behalf to cross-examination on the allegation of adultery was not sustained by the judge. In the Court of Appeal, Hodson and Willmer, L.JJ., made observations in their judgments in respect of that objection, which they held had been correctly disallowed. This case relates solely to those observations.

HODSON, L.J., said that the objection on behalf of the wife to cross-examination on the allegation of adultery was not sustainable, because although the wife did not give any evidence-in-chief denying her adultery, she had in answer to the petition for divorce sworn an affidavit verifying the denial of adultery, and that was evidence "in the proceedings" within the meaning of s. 32 (3) of the Matrimonial Causes Act, 1950.

WILLMER, L.J., said that it seemed to have been overlooked that the wife had, by swearing to the truth of the statements in her answer, already denied on oath the charge of adultery, and in those circumstances he found it hard to see how it would have been right to exclude that line of cross-examination.

APPEARANCES: *A. A. Edmondson* (*Baines & Baines*, for *Edward A. Simans*, Birkenhead); *N. A. Miscampbell* (*Gibson & Weldon*, for *S. Leslie Black*, Liverpool).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 200

HUSBAND AND WIFE: WEDDING PRESENTS: NO PRESUMPTION OF LAW OF JOINT GIFTS TO SPOUSES

Samson *v.* Samson

Hodson, Willmer and Devlin, L.JJ. 2nd February, 1960

Appeal from Mr. Registrar Forbes.

A wife made a claim under the Married Women's Property Act, 1882, and the Matrimonial Causes (Property and Maintenance) Act, 1958, to one-half of the wedding presents in chattels and money received by her husband and herself on the occasion of their marriage, asserting that there was a prima facie presumption of law that wedding presents should be regarded as gifts made jointly to the spouses. The registrar made an order to the effect that the gifts to the spouses from their respective relatives and friends should be their respective property; and, in particular, that as the larger part of the gifts of money had come from the husband's side, there should be a relatively small payment to the wife. The wife appealed.

HODSON, L.J., said that the question of discretion did not arise; but, assuming the wife to be right, it did not follow that the court would in the exercise of its discretion order payment over, as the money might have been expended on the purchase of a house or the assignment of a tenancy. The registrar had assigned to the spouses the gifts from their respective relatives and friends, and found that there was no evidence that any donor knew the spouses equally well. No doubt there was a principle of law that a gift must be considered by reference to the intention of the donor, but there was no authority in this country for the further proposition that there was a principle of law applicable to wedding presents. In *Hichens* v. *Hichens* [1945] P. 23, Lord Goddard observed obiter that "One often has to solve the problem by saying that if a present was given by a friend or relation of the wife, the property should be given to the wife," and vice versa. That, with respect, seemed to be eminently sound sense, but did not purport to be a declaration of law. In *Newgrosh* v. *Newgrosh* (cited in *Rimmer* v. *Rimmer* [1953] 1 Q.B. 63) Bucknill, L.J., had said that, apart from any well established principle of law, property disputes between spouses might well be dealt with on the principle of "palm tree justice." It had not been established as a matter of law that any intention was to be attributed to the donor.

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WILLMER and DEVLIN, L.JJ., agreed. Appeal dismissed with costs.

APPEARANCES: *G. V. Owen* (*Millward, Ladsky & Co.*, Wembley); *H. S. Law* (*Philip Taylor & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 190

HIRE PURCHASE: AGREEMENT: IMPLIED STATUTORY CONDITION THAT GOODS FIT FOR PURPOSE: WHETHER HIRER ESTOPPED FROM ALLEGING THAT IMPLIED STATUTORY CONDITION BROKEN

Lowe *v.* Lombank, Ltd.

Lord Goddard, Upjohn, L.J., and Diplock, J.

9th February, 1960

Appeal from Southport County Court.

The plaintiff, a widow of sixty-five years of age, agreed to purchase a motor car on hire-purchase terms for £223, the sum of £158 8s. being obtained from the defendants, a hire-purchase company. The hire-purchase agreement dated 9th June, 1958, entered into between the defendants and the plaintiff, consisted of a printed form and provided for the payment of that sum to the defendants by twenty-four monthly instalments. Clause 8 provided that where the hire-purchase price did not exceed £300 the only warranties should be those implied under the Hire-Purchase Acts, 1938 and 1954, in respect of hire-purchase transactions within the Acts. Clause 9 (ii) provided that where the price did not exceed £300 the hirer acknowledged that he had examined the goods and that they were of merchantable quality and, further, that he had "not made known to the owners expressly or by implication the particular purpose for which the goods are required," and that the goods were fit for the purpose for which they were in fact required. When the plaintiff signed the hire-purchase agreement she did not read it and had not seen the car, but the salesman assured her that it was "perfect" or nearly so. The car was brought round to her later that day but not left with her. When it was delivered she signed a delivery receipt which contained a statement that she acknowledged that she had read the hire-purchase agreement "made" between the defendants and herself and, further, that she had examined the goods and that they were in good order and condition. The car, in fact, was not roadworthy, and on 5th January, 1959, the plaintiff started proceedings for damages for breach of the implied condition of fitness for purpose in s. 8 (2) of the Hire-Purchase Act, 1938. The county court judge found as a fact that no provision in the hire-purchase agreement modifying the implied statutory condition had been brought to the plaintiff's notice, and held that the hire-purchase agreement was subject to the implied condition that the car should be reasonably fit for the purpose for which it was required, that was a means of transport, but that the plaintiff was estopped from relying upon the defects which existed in the car as constituting a breach of that implied condition. The plaintiff appealed. *Cur. adv. vult.*

DIPLOCK, J., delivering the judgment of the court, said that on the true construction of the hire-purchase agreement the plaintiff had by implication made known to the defendants that she required the car for the purpose of driving about in. Further, the defendants were not entitled to rely on cl. 9 (ii) of the agreement since it was clearly an attempt, which only the size of the print in which it was set out prevented one calling blatant, to evade the provisions of s. 8 (2) of the Hire-Purchase Act, 1938. As to the defence founded on estoppel, which was based on the statement in the delivery receipt, a document in a printed form drafted and supplied by the defendants, it was necessary for the defendants to show (1) that it was clear and unambiguous; (2) that the plaintiff meant it to be acted upon by the defendants or at any rate so conducted herself that a reasonable man in the position of the defendants would take the representation to be true and believe that it was meant that he should act upon it (see *Citizens' Bank of Louisiana* v. *First National Bank of New Orleans* (1873), L.R. 6 H.L. 352); (3) that the defendants in fact believed it to be true and were induced by such belief to act upon it. In their lordships' judgment the alleged estoppel failed to satisfy any of these requirements, and, accordingly, the plaintiff was entitled to succeed and the appeal would be allowed. Appeal allowed.

APPEARANCES: *G. H. C. Bingham*, Q.C., and *J. Jaffe* (*Barrie & Letts*, for *John P. Bonney & Adler*, Southport); *T. G. Roche*, Q.C., and *D. Morris* (*Victor Mischcon & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 196

Chancery Division

SOLICITOR: FAILURE TO COMPLY WITH FOUR-DAY ORDER: COSTS

***In re* a Solicitor**

Cross, J. 26th February, 1960

Motion.

A solicitor had failed to comply within four days with an order made by Cross, J., on 26th January, 1960, that he should hand over certain papers to a firm of solicitors nominated by the Council of The Law Society. On 23rd February, 1960, the solicitor agreed before his lordship to hand over the papers at the solicitors' office on the following day at 5 p.m., but he did so on 25th February.

CROSS, J., ordered that the costs of the Council of The Law Society should be paid by the solicitor on a common fund basis.

APPEARANCES: *D. A. Thomas* (*Hempsons*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

Queen's Bench Division

FACTORY: DANGEROUS MACHINERY: NEED FOR FENCING

Quintas *v.* National Smelting Co., Ltd.

Devlin, J. 26th November, 1959

Action.

The defendants were the occupiers of a factory in which they operated an overhead travelling cable way, known as the ropeway, for the purpose of transporting material from one part of the factory to another. The ropeway was supported by stanchions, on each side of which there ran a cable, and along these cables, one going one way and the other the reverse, there were large buckets constantly in motion. The buckets were spaced at intervals of 110 feet and travelled at a maximum speed of three miles per hour. When they were travelling at that speed, a given spot on the route of the ropeway would be passed by a bucket about twice in a minute. For most of its route the ropeway was sufficiently high above the ground to obviate the need for any protection for men working or passing underneath. But at one point

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Newbury.—DAY, SHERGOLD & HERBERT, F.A.I., Est. 1889. Chartered Auctioneers and Estate Agents, Market Place, Newbury. Tel. Newbury 775.

Newbury.—DREWEATT, WATSON & BARTON. Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

Newbury.—C. G. FOWLIE, F.R.I.C.S., F.A.I., Chartered Surveyor, 16 Bartholomew Street. Tel. 761 (2 lines).

Newbury and Hungerford.—A. W. NEATE & SONS. Est. 1876. Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620. Hungerford 8.

Reading.—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street Chambers. Tel. 54271/2.

Windsor and Reading.—BUCKLAND & SONS, High Street, Windsor. Tel. 48. And 154 Friar Street, Reading. Tel. 51370. Also at Slough and London, W.C.

BUCKINGHAMSHIRE

Amersham and The Chalfonts.—SWANNELL & SLY, Hill Avenue, Amersham. Tel. 73. Valuers, Auctioneers, etc.

Amersham, Chesham and Great Missenden.—HOWARD, SON & GOOCH, Auctioneers, Surveyors, and Estate Agents, Oakfield Corner, Amersham (Tel. 1430), and at Chesham 8097 and Great Missenden 2194.

Aylesbury.—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 18 Market Square. Tel. 4661/3.

Aylesbury.—W. BROWN & CO., 2 Church Street. Tel. 4706/7. Urban and Agricultural practice.

Beaconsfield.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents. Opposite the Post Office. Tel. 1290/1.

Farnham Common.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, The Broadway. Tel. 109.

High Wycombe.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 30 High Street. Tel. 2576/7/8/9.

BUCKINGHAMSHIRE *(continued)*

High Wycombe.—HUNT & NASH, F.R.I.C.S., F.A.I., Chartered Surveyors, 15 Crendon Street. Tel. 884.

High Wycombe and South Bucks.—H. MORCOM JONES & CO., F.A.I., Chartered Auctioneers, 86 Easton Street. Tel. 1404/5.

North Bucks.—DOUGLAS STRATFORD & CO. Est. 1890. Bletchley 2201/2. Bedford 66373. Luton 2953.

Princes Risborough.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, High Street. Tel. 744/5.

Slough.—EDWARD & CHARLES BOWYER, Chartered Surveyors, 15 Curzon Street. Tel. Slough 20321/2.

Slough.—BUCKLAND & SONS, 26 Mackenzie St. Tel. 21307. Also at Windsor, Reading and London, W.C.1.

Slough.—HOUSEMANS, Estate and Property Managers, Surveyors, Valuers, House, Land and Estate Agents, Mortgage and Insurance Brokers, 46 Windsor Road. Tel. 25496. Also at Ashford, Middlesex.

Slough and Gerrards Cross.—GIDDY & GIDDY. Tel. Nos. Slough 23379, Gerrards Cross 3987.

CAMBRIDGESHIRE

Cambridge.—HOCKEY & SON. (Est. 1885). Auctioneers and Surveyors. 8 Benett Street. Tel. 59455/6.

Cambridge and County.—WESTLEY & HUFF, Auctioneers, Surveyors and Valuers, 10 Hills Road, Cambridge. Tel. 55665/6.

CHESHIRE

Altrincham.—STUART MURRAY & CO., Auctioneers, etc., 8 The Downs. Tel. 2302/3. And at Manchester.

Birkenhead.—SMITH & SONS (Est. 1840), Auctioneers, Valuers. Tel. Birkenhead 1590. And at Liverpool.

Birkenhead and Wirral.—Messrs. JAMES HARLAND, W. J. Harland, F.R.I.C.S., F.A.I., Chartered Surveyor, 46 Church Road, Birkenhead. Tel. 1597/8.

Chester.—BERESFORD, ADAMS & SON. (Est. 1899). Auctioneers, Valuers and Surveyors. 22 Newgate Street. Tel. No. 23401.

Chester.—BROWNS OF CHESTER, LTD., Auctioneers, Valuers and Estate Agents. 103 Foregate Street. Tel. Chester 21495/6.

Chester.—HARPER, WEBB & CO. (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. Chester 20685.

Chester.—SWETENHAM, WHITEHOUSE & CO., Auctioneers, Estate Agents, Surveyors, Valuers, 5 St. Werburgh Street. Tel. 20422.

Congleton.—LOUIS TAYLOR & SONS, F.A.I., Chartered Auctioneers and Estate Agents, 21 High Street, Tel. 91.

Congleton.—W. J. WHITTAKER & CO., Incorporated Auctioneers, Valuers and Estate Agents, Congleton, Cheshire. Tel. 241.

Crewe. — HENRY MANLEY & SONS, LTD., Auctioneers & Valuers, Crewe (Tel. 4301) & Branches.

Macclesfield.—BROCKLEHURST & CO., Auctioneers, Valuers, Estate Agents, King Edward Street. Tel. 2183.

Nantwich, Northwich, Winsford & Tarporley.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 1 Hospital Street, Nantwich. Tel. 65410.

Northwich.—MARSH & SON, Auctioneers, Valuers, Estate Agents, 4 Bull Ring Tel. 2216.

Stockport.—HOPWOOD & SON (Est. 1835), Chartered Auctioneers, Valuers, Estate Agents, 69 Wellington Road South. Tel. STO 2123.

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County of Cornwall.—JOHN JULIAN & CO., LTD. Established 1836. Auctioneers, Valuers, Estate Agents. Offices at Newquay, Truro, Falmouth and Wadebridge.

County of Cornwall.—RUSSELL & HAMLEY, F.A.I. (C. J. Hamley, F.A.I., A. W. Russell, F.A.I.), 31 Town End, Bodmin. Tel. 346.

Falmouth.—R. E. PRIOR, F.R.I.C.S., F.A.I., Chartered Surveyor and Auctioneer, The Moor, Falmouth. Tel. 1224.

Mid-Cornwall.—S. A. WILSON, F.V.I., St. Austell. Tel. 743 (day and night). Valuer, Business and House Agent.

Penzance, St. Ives, West Cornwall and Isles of Scilly.—W. H. LANE & Son, F.A.L.P.A., The Estate Offices, Morrab Road, Penzance. Tel. Penzance 2286/7.

(continued on p. xvii)

CORNWALL *(continued)*

Redruth.—A. PEARSE JENKIN & PARTNERS. Est. 1760. Auctioneers, Surveyors and Valuers, Alma Place.

St. Austell & Looe.—LAMPSHIRE & NANCOLLAS. Chartered Auctioneers and Estate Agents. St. Austell 3254/5. Looe 309.

St. Austell, Lostwithiel and Liskeard.—ROWSE, JEFFERY & WATKINS, Auctioneers, Valuers, Surveyors and Estate Agents. St. Austell 3483/4. Lostwithiel 45 and 245. Liskeard 2400.

Truro, Mid and West Cornwall.—R. G. MILLER & CO., Auctioneers, Valuers and Estate Agents. Established 1934. R. G. Miller, F.V.I., A. I. Miller, A.A.I., 6 King Street. (Phone Truro 2503.)

DERBYSHIRE

Derby.—ALLEN & FARQUHAR, Chartered Auctioneers and Estate Agents, Derwent House, 39 Full Street. Tel. Derby 45645 (3 lines).

DEVONSHIRE

Axminster—25-mile radius.—TAYLOR & CO., Auctioneers, Valuers, Surveyors, Estate Agents. Tel. 2323/4.

Axminster, East Devon, South Somerset and West Dorset Districts.—R. & C. SNELL, Chartered Auctioneers, Estate Agents, Valuers and Surveyors, Axminster (Devon), Chard (Somerset) and Bridport (Dorset).

Barnstaple and N. Devon.—BRIGHTON GAY, F.A.L.P.A., Surveyors, Valuers, Auctioneers, Joy Street, Barnstaple. Tel. 4131.

Barnstaple and N. Devon.—J. GORDON VICK, F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneer. Tel. 4388.

Bideford and North Devon.—R. BLACKMORE & SONS, Chartered Auctioneers and Valuers. Tel. 1133/1134.

Bideford and North Devon.—A. C. HOOPER & CO., Estate Agents and Valuers. Tel. 708.

Brixham and Torbay.—FRED PARKES, F.A.L.P.A., Estate Agent, Auctioneer and Valuer, 15 Bolton Street. Tel. 2036.

Devon and Exeter.—GUY MICHELMORE & CO., Norwich Union House, Exeter. Tel. 76464/5.

Devon, Exeter and S.W. Counties.—RICKEARD, GREEN & MICHELMORE, Estate Agents, Auctioneers, Surveyors and Valuers, 82 Queen Street, Exeter. Tel. 74072 (2 lines).

Exeter.—RIPPON, BOSWELL & CO., Incorporated Auctioneers and Estate Agents, Valuers and Surveyors. Est. 1884. Tel. 59378 (3 lines).

Ilfracombe.—W. C. HUTCHINGS & CO., Incorporated Auctioneers, Valuers and Estate Agents. Est. 1887. Tel. 138.

Okehampton, Mid Devon.—J. GORDON VICK, Chartered Surveyor, Chartered Auctioneer. Tel. 22.

Paignton, Torbay & South Devon.—TUCKERS, Auctioneers and Surveyors, Paignton. Tel. 59024.

Plymouth.—D. WARD & SON, Chartered Surveyors, Land Agents, Auctioneers and Valuers. (Est. 1872). 11 The Crescent, Plymouth. Tel. 66251/4.

Sidmouth.—POTBURY & SONS, LTD., Auctioneers, Estate Agents and Valuers. Tel. 14.

Teignmouth, Shaldon, etc.—ROBT. FROST & SON (Robt. Frost, F.A.I., Chartered Auctioneer and Estate Agent). Est. 1857. 5 Regent Street, Teignmouth. Tel. 671/2.

Torquay and South Devon.—WAYCOTTS, Chartered Auctioneers and Estate Agents, 5 Fleet Street, Torquay. Tel. 4333/5.

DORSETSHIRE

Poole, Parkstone, Broadstone.—RUMSEY & RUMSEY. Head Office 111 Old Christchurch Road. Tel. Bournemouth 21212. 14 Branch Offices in Hants and Dorset and Channel Islands.

West Dorset.—ALLEN, TAYLOR & WHITFIELD, 25 East Street, Bridport. Tel. 2929.

DURHAM

Darlington.—JAMES PRATT & SONS, F.V.I., Auctioneers, Valuers and Estate Agents, 40a High Row. Tel. 4831.

Darlington.—SANDERSON, TOWNEND & GILBERT, Chartered Surveyors, 92 Bondgate.

it crossed the flat roof of a building, containing a crushing plant, which was 18 feet above ground level. The bottom of the bucket passed 4 feet above the level of that roof and so persons on the roof were in danger. Part of the flat roof of the crushing plant was occupied by a small building known as the magnet house. Access to the magnet house was obtained by a door which opened on to a corner of the flat roof. A man emerging from this door and turning left had to walk only a few paces to get to the door of the magnet house, and this walking space was fenced in by a handrail about 3 feet high and consisting of posts and two rails. At the material time there was a gap of 18 inches in this handrail. It had been cut to allow some equipment through and never replaced. Just before the accident the plaintiff, who was employed by the defendants and who had finished a job in the magnet house, walked through the gap out to the edge of the roof to attract attention so that he could send a message to his foreman and, standing in the route of the ropeway, he was struck by a bucket and thrown from the flat roof to the ground below, sustaining injuries. In an action against his employers for damages for, *inter alia*, breach of statutory duty, the plaintiff contended that the ropeway was "machinery" within the meaning of s. 14 (1) of the Factories Act, 1937, and that the part of it which crossed the roof of the crushing plant was dangerous and was not securely fenced as required by that section.

DEVLIN, J., said that the defendants suggested that the ropeway was simply a means of transport which was to be compared with a railway, the only difference being that, while in the case of a railway the vehicle moved on the rails, in the case of the ropeway it was suspended from them. The plaintiff submitted that the ropeway was more justly to be compared with a conveyor belt, the only difference being that it operated over the whole factory instead of in a particular workshop. It was clear that the transport of materials for use in the processes of manufacture was something ancillary to those processes. His lordship did not think that it followed from this, as the defendants suggested, that every truck on a factory railway or every vehicle within the factory which was carrying material was a machine for the purposes of the Acts. Even if it did so follow, it did not also follow that the machine would have to be "fenced." No doubt a vehicle in motion might be a dangerous thing; but s. 14 did not require that the machine as a whole should be securely fenced but that every dangerous part of it should be. Normally, the dangerous parts of a vehicle were covered in. The defendants invited the court to regard the buckets as separate pieces of machinery and to compare them with any other form of vehicle; there was nothing dangerous about a bucket, they said, except its motion. But, in his lordship's judgment, the whole of the ropeway had to be regarded as one piece of apparatus and as machinery within the meaning of the Act. That did not, of course, mean that every part of it had to be fenced, but only those parts, such as the one he was considering in this case, where there was danger to those underneath. The fence must not merely guard against accident but must be such as took into account human weaknesses which included, as well as forgetfulness and inadvertence, an inclination sometimes to run minor risks and to take short cuts. The fence need not, however, be constructed so as to keep out a determined man. In this case the fence was not of proper construction, even without the gap of 18 inches which had been cut in it, and was not in compliance with s. 14 (1) of the Act. On the facts, however, the plaintiff's own negligence was the main cause of the accident, and his contributory negligence was to be assessed at 75 per cent.

APPEARANCES: *Dudley Collard* and *W. J. Ward* (*W. H. Thompson*); *W. L. Mars-Jones*, Q.C., and *H. E. Park* (*Gascoin & Co.*).

[Reported by A. D. RAWLEY, Esq., Barrister-at-Law] [1 W.L.R. 217

LIBEL: JUSTIFICATION: FAIR COMMENT

Anders *v.* Gas

Ashworth, J.

29th February, 1960

Action.

The plaintiff complained of an article in a newspaper which contained four statements of fact and a comment thereon. Among the questions which the defendants proposed to put to the jury were, first, a question based on s. 5 of the Defamation Act, 1952: "If some of the words complained of are true, do the words not proved to be true materially injure the plaintiff's reputation having regard to the truth of the charges made by the words which are true?" and, secondly, a question based on s. 6 of the Act: "If only some of the facts on which the comment . . . is made are true, is that expression of opinion fair comment having regard to such of the facts on which the comment is founded as are true?" On behalf of the plaintiff it was submitted that s. 6 of the Act had not been pleaded and that therefore it was a question of law for the court whether, on the jury's findings as to the statements of fact, the defence succeeded.

ASHWORTH, J., said that at some stage the jury would have to decide whether the defence of fair comment was made out, and both the questions would have to be put to them. The wording of the questions was taken straight from the Act, and they were in the right form. For the first defendant, the writer of the article, it was submitted that a liberal construction of s. 6 should be adopted. If a defendant made a comment based on one true statement and several lies, and proved the truth of the one statement, and the comment would have been perfectly correct if based on that statement alone, then the defence of fair comment based on the section should still fail, for the comment would not be fair. Taken literally, the section gave defendants an advantage which the Legislature never intended.

On behalf of the second defendant, the publisher, it was submitted that a man's reputation could be looked at quantitatively and qualitatively. Qualitatively, the reputation might be as a soldier or a mathematician. Under s. 5, if the defendant proved an allegation that a general was thoroughly incompetent in battle and failed to prove an allegation that years before as a colonel he had shown similar stupidity, that was of the same quality but different quantity and the defence would succeed. It would be a matter for the jury. It was further submitted that if an allegation were made that the general was so cowardly that he ran away from the enemy, that would be attacking him in a different way and would again be a matter for the jury. He was not saying that that was wrong, but he did not think that it would be helpful to the jury to talk about quantity and quality. The proper thing was to say: if statements one and two were proved, then did three damage him? Directing the jury, he said that with respect to the defence under s. 5 of the Act they should imagine five separate charges made against a man. Three might be proved to be true, the other two not. If the two not proved to be true were in their view really minor matters, not materially affecting the plaintiff's reputation having regard to the other three, then the defence of justification succeeded. On the other hand, if these two were of themselves serious and did materially injure the plaintiff's reputation, then the defence should fail. With respect to the defence based on s. 6 the jury should imagine that they found some of the allegations of fact proved and others not. So long as the comment was fair having regard to the allegations which had been proved, that was not necessarily fatal, for Parliament had provided that the defence should not fail only by reason of this. The new section was introduced to protect defendants whose conduct was fair, but who might have, for example, got a date or place wrong or misrepresented an incident.

The jury found, *inter alia*, that both the defences based on the Act failed.

APPEARANCES: *Peter Rawlinson*, Q.C., *Helenus Milmo* and *George Dobry* (*E. H. Silverstone & Co.*); *Neville Faulks*, Q.C., and *Peter Bristow* (*Lewis & Lewis and Gisborne & Co.*); *Stephen Terrell* (*Lewis & Lewis and Gisborne & Co.*).

[Reported by GROVE HULL, Esq., Barrister-at-Law]

MASTER AND SERVANT: MANAGER: BONUS: ENTITLEMENT

Orman *v.* Saville Sportswear, Ltd.

Pilcher, J. 2nd March, 1960

Action.

In December, 1954, the defendants engaged the plaintiff as production manager at their skirt factory at a salary of £30 a week with an addition of 2d. a skirt on all skirts produced at the factory: that bonus, calculated from time to time, usually amounted to about £20 a week. At the time the contract was made the plaintiff did not give his mind to what was to happen if he should be absent from work through sickness and the defendants' representative did not mention it because he thought that the plaintiff could be dismissed after a week's notice, although they would probably have paid him his salary for a longer period as an act of grace. On 12th November, 1956, the plaintiff became ill and was absent from work through sickness until January, 1957. On 29th January, 1957, his employment was terminated. The defendants paid the plaintiff his salary of £30 a week for the period 12th November to 29th January, saying that they did so as an act of grace and not because he was legally entitled to it, and the plaintiff now claimed the amount (agreed to be £250 6s. 2d.) as bonus at 2d. a skirt on all the skirts produced at the factory during that period.

PILCHER, J., said that where a contract of service was silent as to the employee's right to be paid during absence through sickness, the employer continued liable to pay the employee until the contract was terminated unless a term to the contrary could be implied from all the facts in the case: it was for an employer asserting such a term to make it good. On the facts of the case it was clear that, had the matter been mooted at the time when the contract was made, the parties would have disagreed; it followed that no such term could be implied and the defendants were liable to pay the plaintiff his salary until the contract was terminated. As to whether there was a distinction between the plaintiff's legal right to the basic salary and his right to the bonus, the question was: What was his remuneration? His remuneration was in the neighbourhood of £50 a week, that was, basic salary and bonus. The realities of the situation demanded that the plaintiff should receive his full remuneration during the period he was absent through sickness and, therefore, he was entitled to recover the amount claimed. Judgment for the plaintiff.

APPEARANCES: *Nigel Bridge* (*Osmond, Bard & Westbrook*); *C. Lewis Hawser*, Q.C., and *M. Levene* (*S. Arnold & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

First Offenders (Scotland) Bill [H.C.] [29th February.
Highlands and Islands Shipping Services Bill [H.C.] [3rd March.
Requisitioned Houses Bill [H.C.] [3rd March.

Read Second Time:—

Charities Bill [H.L.] [1st March.
Coal Industry Bill [H.C.] [3rd March.

Read Third Time:—

Matrimonial Proceedings (Magistrates' Courts) Bill [H.L.] [3rd March.
Radioactive Substances Bill [H.L.] [29th February.
Road Traffic Bill [H.L.] [3rd March.

In Committee:—

Local Employment Bill [H.C.] [29th February.

B. QUESTIONS

STREET OFFENCES ACT PROSECUTIONS

EARL BATHURST said that between 16th August and 31st December, 1959, there were 889 convictions of offences under s. 1 (1) of the Street Offences Act, 1959; that was one-tenth of the number for the same period in 1958. In sixty-three cases, sentences of imprisonment were imposed, of which twenty-seven were for periods of one month or less; nineteen for periods of more than one month but not more than two months, and seventeen for periods of more than two and up to three months. [1st March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Civil Aviation Licensing Bill [H.C.] [2nd March.
Noise Abatement Bill [H.C.] [4th March.

Read Third Time:—

Game Laws (Amendment) Bill [H.C.] [4th March.

B. QUESTIONS

REQUISITIONED HOUSES: REPRESENTATIONS

Mr. HENRY BROOKE, Minister of Housing and Local Government and Minister for Welsh Affairs, said that he was prepared to consider representations where the owner of a requisitioned house thought that inclusion of the property in an order under the Requisitioned Houses Bill would cause him serious hardship. Representations should be made as soon as possible. In making them, the owner should explain the nature of the hardship which might be suffered, and the circumstances giving rise to it. If he wanted the requisitioned house for his own occupation, he should give details of the tenure of his present accommodation and the reasons why he needed to obtain vacant possession of his requisitioned house on 1st April next. If serious hardship was claimed on financial grounds, this should be supported with details of any commitment or liability which the owner might have undertaken on the assumption that his property would be de-requisitioned by 31st March. In all cases information should be provided showing the owner's legal interest in the requisitioned property and the date when that interest was acquired. A copy of the owner's representations to him should be sent simultaneously to the local authority in possession of his property. The purpose of the Bill was to prevent licensees in a limited number of cases from becoming trespassers on 1st April. In considering an owner's application for the exclusion of his property from an order, he would weigh his claims against the ability of the local authority to re-house the occupants of the house in the time remaining before 31st March. [1st March.

RESTRICTIVE TRADING AGREEMENTS

Mr. J. RODGERS said that the Board of Trade had so far given directions to the Registrar of Restrictive Trading Agreements authorising him to remove the particulars of seven agreements from the register. [3rd March.

IMMORAL EARNINGS (SENTENCED PERSONS)

Mr. R. A. BUTLER said that the number of convictions for living on immoral earnings in the metropolitan police district

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Benfleet, Hadleigh and South-East Essex.—Messrs. JOHN S. LLOYD, F.A.I., Chartered Auctioneers and Estate Agents, Estate House, Hadleigh, Essex. Tel. 58523.

Brentwood and Mid-Essex.—HOWARD'S & CO. (BRENTWOOD), LTD., Surveyors, Valuers and Estate Agents, 143 High Street, Brentwood. Tel. Brentwood 4338.

Chelmsford, Billericay and Braintree.—FRED TAYLOR & CO., Chartered Auctioneers and Estate Agents, 17 Duke Street. Tel. 55561/2/3, Billericay Tel. 112 and Braintree Tel. 1564.

Chelmsford and Wickford.—R. COOPER HIRST, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer and Estate Agent, 12 Duke Street, Chelmsford (Tel. 4534) and Market Road, Wickford (Tel. 3058).

Chelmsford and Witham.—BALCH & BALCH, Chartered Surveyors, Auctioneers and Valuers, 3 Tindal Square, Chelmsford. Tel. 51551; and Witham Tel. 3381.

Clacton-on-Sea.—DONALD COTTAGE, EAVES & CO., (Chas. W. Eaves, F.A.I., F.A.L.P.A.), 67/69 Station Road, Clacton-on-Sea. Tel. 857/8. And at Holland-on-Sea. Tel. 3270.

Colchester and District.—C. M. STANFORD & SON (Partners and Senior Personnel fully qualified members of Professional Institutes), 23 High Street, Colchester. Tel. 3165 (4 lines).

Hornchurch.—HAYWARD & CO., Surveyors, Valuers and Estate Agents, 163 High Street. Tel. 46635/6.

Ilford.—S. A. HULL & CO., F.A.I., Chartered Auctioneers and Estate Agents, 16 Clements Road. Tel. ILFord 4366/7, and at 404 Cranbrook Road, Gantshill. Tel. Valentine 9525.

Leigh-on-Sea.—GORDON LANE & BUTLER, Auctioneers and Surveyors, 125 Rectory Grove. Tel. 78340.

Leigh-on-Sea.—HAIR (FREDK. G.) & SON, Auctioneers and Surveyors, 1528 London Road. Tel. 78666/7.

Leigh-on-Sea, Rayleigh and Country Districts.—HAROLD W. PINCHBECK, Chartered Surveyor and Valuer (Pinchbeck, Chapman & Co.), 80 Rectory Grove, Leigh-on-Sea (75002) and High Street, Rayleigh Tel. 24.

Maldon.—CLAUDE C. COWELL, F.A.L.P.A., F.V.I., 9 London Road. Tel. 88.

Romford and District.—R. CHEKE & CO., 18 North Street, Hornchurch, Essex. Hornchurch 8688 and branches.

Romford, Upminster and District.—HILBERY CHAPLIN & CO., Chartered Auctioneers, Estate Agents and Surveyors, 135 South Street, Romford (Tel. Romford 45004) and 42 Station Road, Upminster (Tel. Upminster 2866).

Southend-on-Sea and S.E. Essex.—TAYLOR, SON & DAVIS, Auctioneers and Surveyors, 37 Victoria Avenue, Tel. Southend 41201 (3 lines). And at Westcliff-on-Sea and Leigh-on-Sea.

Southend, Westcliff and Country Districts.—H. V. & G. SORRELL, Chartered Surveyors, Auctioneers and Estate Agents, 40 Clarence Street, Southend. Tel. Southend 42225. And at High Street, Rayleigh.

Southend, Westcliff and South East Essex.—TALBOT & WHITE, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, Established 1885. 34 Clarence Street, Southend-on-Sea. Tel. Southend 48137/8, and 29 and 31 Hamlet Court Road, Westcliff-on-Sea. Tel. Southend 47821/2.

Westcliff, Southend-on-Sea and District.—ASHTON AGAR & CO., Chartered Auctioneers and Estate Agents, 589 London Road, Westcliff-on-Sea. Tel. Southend 42624.

Woodford.—MARK LIELL & SON, Chartered Surveyors, 9 High Road, Woodford Green. Tel. Buckhurst 0181, and East Ham.

GLOUCESTERSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents. Special Probate Department. New Bond Street Chambers, 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Bristol.—C. J. HOLE & SONS (Est. 1867), 70 Park Row, Bristol, 1. Auctioneers, etc. Tel. 24324 (4 lines).

Bristol.—LALONDE, BROS. & PARHAM (Est. 1848), 64 Queens Road. Tel. 27731 (8 lines). And at Weston-super-Mare.

Bristol.—JOHN E. PRITCHARD & CO. (Est. 1790), Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 82 Queens Road, Bristol, 8. Tel. 24334 (3 lines).

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between 1st January and 15th August, 1959, was 112; 102 resulted in sentences of imprisonment, of which the average length was about seven months. During the remainder of the year there were twenty-six convictions, resulting in twenty-one sentences of imprisonment of an average length of about thirteen months. [3rd March.

OBSCENE PUBLICATIONS

Mr. BARBER said that during 1959 there were 505 forfeitures of indecent or obscene publications under the Customs and Excise Act, 1952. [3rd March.

TOWN AND COUNTRY PLANNING (ENFORCEMENT PROVISIONS)

Mr. HENRY BROOKE said that he had in mind to include some amendment of the unsatisfactory provisions in the Town and Country Planning Act, 1947, in a Bill he would be introducing to deal with problems relating to caravans. The two matters were closely related, and the provisions on planning enforcement would be of general application. [3rd March.

NATIONAL INSURANCE ADVISORY COMMITTEE'S REPORT

Mr. BOYD-CARPENTER said that the Report of the National Insurance Advisory Committee on long-term hospital patients, published recently, was very valuable, and that he was accepting all its recommendations, the most important of which was that mentally disordered patients who, as the result of criminal proceedings, were sent to hospital and not sentenced to imprisonment, should be treated in the same way as other sick people and not be disqualified from any National Insurance benefits to which they might be entitled. He would soon be submitting draft regulations to the Committee designed to implement its recommendations. [3rd March.

STATUTORY INSTRUMENTS

Appeal Aid Certificate Rules, 1960. (S.I. 1960 No. 258.) 5d.
Bexhill Water Order, 1960. (S.I. 1960 No. 300.) 5d.
Camborne (Water Charges) Order, 1960. (S.I. 1960 No. 243.) 5d.
Criminal Appeal (Fees and Expenses) Regulations, 1960. (S.I. 1960 No. 259.) 5d.
Cycle Racing on Highways (Scotland) Regulations, 1960. (S.I. 1960 No. 270.) 6d.
Legal Aid and Advice Act, 1949 (Commencement No. 7) Order, 1960. (S.I. 1960 No. 257.) 4d. See p. 175, *ante*.
London Traffic (Prescribed Routes) Regulations, 1960:—
Camberwell. (S.I. 1960 No. 306.) 5d.
City of London and Stepney. (S.I. 1960 No. 307.) 5d.
London Traffic (Prohibition of Waiting) (Walton and Weybridge) (Amendment) Regulations, 1960. (S.I. 1960 No. 312.) 5d.
London Traffic (Waiting and Loading) (Restriction) (Amendment) Regulations, 1960. (S.I. 1960 No. 313.) 8d.
Mid Kent (Water Charges) Order, 1960. (S.I. 1960 No. 302.) 5d.
New Mills (Water Charges) Order, 1960. (S.I. 1960 No. 301.) 4d.
Poor Prisoners' Defence Regulations, 1960:—
Defence Certificate. (S.I. 1960 No. 260.) 5d. See p. 175, *ante*.
Legal Aid Certificate. (S.I. 1960 No. 261.) 5d. See p. 175, *ante*.
Probation Grant (Deduction) (Scotland) Amendment Regulations, 1960. (S.I. 1960 No. 309.) 5d.
Stopping up of Highways Orders, 1960:—
County of Berks (No. 2). (S.I. 1960 No. 266.) 5d.
County of Chester (No. 3). (S.I. 1960 No. 268.) 5d.
County of Derby (No. 4). (S.I. 1960 No. 299.) 5d.
County of Essex (No. 3). (S.I. 1960 No. 288.) 5d.
City and County Borough of Liverpool (No. 4). (S.I. 1960 No. 303.) 5d.
City and County Borough of Liverpool (No. 5). (S.I. 1960 No. 304.) 5d.
London (No. 15). (S.I. 1960 No. 289.) 5d.
London (No. 16). (S.I. 1960 No. 297.) 4d.
County of Oxford (No. 1). (S.I. 1960 No. 298.) 5d.
City and County Borough of Portsmouth (No. 2). (S.I. 1960 No. 295.) 5d.
County of Surrey (No. 2). (S.I. 1960 No. 290.) 5d.
County of Warwick (No. 2). (S.I. 1960 No. 296.) 5d.
Taunton Corporation (Water Charges) Order, 1960. (S.I. 1960 No. 247.) 5d.
Winchester–Preston Trunk Road (Hockley Heath By-Pass) Order, 1960. (S.I. 1960 No. 305.) 6d.

SELECTED APPOINTED DAYS

March

1st
Coroners (Fees and Allowances) Rules, 1960. (S.I. 1960 No. 227.)
Jurors' Allowances Regulations, 1960. (S.I. 1960 No. 233.)
Road Traffic Act, 1956, s. 13.
Witnesses' Allowances Regulations, 1960. (S.I. 1960 No. 228.)

14th
Appeal Aid Certificate Rules, 1960. (S.I. 1960 No. 258.)
Criminal Appeal (Fees and Expenses) Regulations, 1960. (S.I. 1960 No. 259.)
Legal Aid and Advice Act, 1949, ss. 21, 22 and 23.
Poor Prisoners' Defence (Defence Certificate) Regulations, 1960. (S.I. 1960 No. 260.)
Poor Prisoners' Defence (Legal Aid Certificate) Regulations, 1960. (S.I. 1960 No. 261.)
Poor Prisoners' Defence (Legal Aid Certificate) (Recovery of Costs) Regulations, 1960 (S.I. 1960 No. 336.)

"THE SOLICITORS' JOURNAL," 10th MARCH, 1860

ON the 10th March, 1860, THE SOLICITORS' JOURNAL published an obituary notice of Thomas Jarman, the author of Jarman on Wills, in the course of which it said that " he commenced life . . . under the guidance of an uncle who was a solicitor at Bristol. Owing to the misfortunes of the latter, Mr. Jarman became obliged to determine for himself upon his future course of life and . . . he came to London about the year 1823 and entered a student of the Middle Temple by which Society he was called to the Bar in February, 1826. . . . Possessing a mind eminently qualified to master the subtleties of the law of real property, he soon turned his attention to what was at that period supposed to be the only course open to a man without connections of influence either in the profession or the world. Sir Edward Sugden, who had then risen to fame and to a lead at the Bar mainly upon his writings, was but one of many instances of the legal press being the portal to professional success. A man like Mr. Jarman, therefore, could not but think of writing a book. He accordingly invoked the counsel of the late Mr. Sweet, father, we believe, of the present law publisher of that name. Mr. Jarman wanted to write a book on Wills which Sweet was willing to publish . . . but suggested that it should come out as an edition of Powell on Devises, as the country attorneys, who were the best customers of law booksellers, were very slow to acknowledge the merits of a new author and preferred new editions to new works. . . . In 1828 . . . Mr. Jarman completed the first volume of the 2nd edition of Bythewood's Conveyancing. . . . In the course of six years he completed the eleven volumes. . . . As might have been anticipated, these convincing proofs of legal skill were not without their effect in attracting clients; but the . . . labours which they involved were accompanied by damage to the health of one who . . . was more or less an invalid. Even . . . while the victim of a painful disease, he was still to be found working at his books. . . . At such times his delight was to have as much of his library as possible around him in the open air. . . . On one occasion a friend found him standing at a desk under a tree in one of his fields, with law books lying all around him, in a space from which the snow had just been cleared away—one of his peculiarities was his antipathy to fires, and his indifference to even severe degrees of cold. It is well for him that he loved his work for its own sake."

REVIEWS

The Town and Country Planning Act, 1959. With General Introduction and Annotations. Being a reprint of Butterworth's Annotated Legislation Service Statutes Supplement No. 116. By ROBERT SCHLESS, of Gray's Inn, Barrister-at-Law. pp. x and (with Index) 148. 1959. London: Butterworth & Co. (Publishers), Ltd. £1 5s. net.

This book is reprinted from Butterworth's Annotated Legislation Service Statutes, and maintains the usual form and high standard of the annotated statutes supplied by that service. It contains a short ten-page introduction outlining the provisions of the Act, an annotated print of the Act, and an appendix in which are to be found the General Development Order, 1959, the Prescribed Forms of Notices Regulations, 1959, and the Limit of Annual Value Order, 1959, all made under the Act and necessary for a complete understanding of its working. There is also a comprehensive index.

The book is thus a complete guide to the Act, but the nature of the introduction and the annotations is such that it is perhaps more suitable for the expert in this field than one who has to venture into it only occasionally and requires a simple statement of what the Act does. The expert is guided very ably by the numerous cross-references in the notes to other statutes and between the sections of the Act itself, so that he can readily see any particular section in its proper perspective in relation to other legislation and sections. The numerous case references on the meanings of words and phrases will also be most useful to him.

Charlesworth's Mercantile Law. Ninth Edition. By CLIVE M. SCHMITTHOFF, LL.D., of Gray's Inn, Barrister-at-Law, and DAVID A. GODWIN SARRE, M.A., of the Middle Temple, Barrister-at-Law. pp. xlii and (with Index) 355. 1960. London: Stevens & Sons, Ltd. £1 1s. net.

Students will welcome another edition of a work which provides an admirable introduction to mercantile law. The scope of this work is wide and the topics considered include the law of contract, bills of exchange, common carriers and carriers by land, life, fire and accident insurance, partnership, bankruptcy, arbitration and bailment. Apart from taking into account the more important of the recent cases, the present edition deals with several recent statutes touching upon this branch of the law, including the Restrictive Trade Practices Act, 1956, the Cheques Act, 1957, and the Merchant Shipping Act, 1958.

Oyez Practice Notes No. 44: Guide to Practical Conveyancing for Solicitors and their Clerks. Second Edition. By EDWARD MOERAN, Solicitor. pp. 101. 1960. The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

The first edition of this book was published (not in the series of Oyez Practice Notes), in 1949. It was a very helpful description of the steps taken in a transaction of sale of freeholds, with a few comments on particular rules affecting leaseholds and the negotiation and completion of mortgages. The author's purpose was to assist those solicitors and clerks whose experience was limited by explaining the procedure he adopted, giving precedents of instructions, sheets and records, and offering practical advice on the various stages in every day transactions.

The new edition has been slightly revised and brought up-to-date and its value has been greatly increased by the addition of chapters on mortgages, leases and wills. The author does not attempt to explain the law of conveyancing (although he reminds readers of many consequences of rules we may overlook). In the main the text deals with the various steps in chronological order and so it will be readily consulted and easily understood by those whose knowledge has been acquired by experience rather than from the reading of text-books.

It is likely that few solicitors will wish to adopt in its entirety the system recommended by the author for recording a transaction of sale or purchase. Nevertheless, many may be persuaded to reconsider their own methods and to apply some of the author's ideas. The book would be very useful to most articled clerks. In the first place it explains the manner in which a solicitor's work is done and provides, within a reasonable compass, a coherent account of practice which is often seen by an articled clerk only in isolated parts. Secondly, for the more experienced articled clerk, and for the recently admitted assistant solicitor, it bridges the gap between the reading of books on real property and conveyancing on the one hand, and the work passing through an office on the other hand.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Some Problems on *Volenti*

Sir,—With reference to the article entitled "Some Problems on *Volenti*" in your issue of 26th February (p. 156), your contributor, in criticising the attitude of the Court of Appeal in *Baker and Another* v. *T. E. Hopkins & Sons, Ltd.* [1959] 1 W.L.R. 966, for giving the impression that different legal principles apply to questions of the existence of a duty of care and the defence of *volenti*, himself appears to be labouring under a misapprehension that the test for remoteness is the same as that for the existence of a duty situation and that this same test of reasonable foreseeability applies in proving the breach of a duty of care once the existence of that duty has been established. The rules of law defining negligent conduct, duty of care and remoteness cannot be subsumed under the ubiquitous heading of reasonable foresight (see the judgments of Lord Wright and Lord Porter in *Bourhill* v. *Young* [1943] A.C. 92). It is the failure to appreciate this point in the past which has led to the persistent misapplication of the defence of *volenti*.

Correctly applied the defence should only be resorted to as an ultimate recourse when liability has been established and all other defences have proved of no avail. Thus it is pointless to apply the principle when the plaintiff fails to establish the existence of a duty of care *vis-à-vis* himself, or where there is no negligence, or where the damage complained of is not caused by the plaintiff's conduct. Otherwise, the defence is merely superfluous.

Two further points arise out of the article. Firstly, it is not correct to say, as does your contributor, that "if negligence is established, *volenti* is immaterial." There may well be a contractual assumption of the risk by the plaintiff, either written or oral, in a case of negligence. All that was suggested by Asquith, J., in *Dann* v. *Hamilton* [1939] 1 K.B. 509, was that in cases of negligence, *volenti* will not be implied from the conduct of the plaintiff.

Secondly, the article raises the question of whether the principle laid down in *Haynes* v. *Harwood & Son* [1935] 1 K.B. 146, applies when the defendant through his own negligence placed himself in the situation from which he required to be rescued. Surely the rationale of this exception in rescue cases as laid down by Maugham, J., in *Haynes* v. *Harwood* is equally applicable where the negligence is that of the defendant himself, namely, did the rescuer consider himself to be under a moral duty to attempt the rescue? It is to the mind of the rescuer that the court should look, not to that of the person whom he has rescued.

J. P. L. LIVERMORE.

Leeds, 1.

[*Our contributor writes:* The purpose of my article was to stress the verbal confusion which so often occurs when the courts discuss the existence of the duty of care in negligence and remoteness of damage. This type of confusion can be seen from the judgments in the Court of Appeal in the case of *King* v. *Phillips* [1953] 1 Q.B. 429. From that case it can be seen that the problem confronting the court could be approached from the standpoint of the existence of the duty of care or from the

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Crawley.—JOHN CHURCHMAN & SONS, Chartered Surveyors, Valuers, Land Agents. Tel. Crawley 1899.

Crawley.—WM. WOOD, SON & GARDNER, Surveyors and Valuers. Tel. Crawley 1.

Crowborough.—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

Eastbourne.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road, Tel. Eastbourne 1285.

Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

East Grinstead.—Messrs. P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road. Tel. East Grinstead 315/6.

East Grinstead.—TURNER, RUDGE & TURNER, Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK, Chartered Surveyors. Tel. Hassocks 882/3.

Hastings, St. Leonards and East Sussex.—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, A.R.I.C.S.), Consultant Chartered Surveyors. Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661/2.

Hastings, St. Leonards and East Sussex.—WEST (Godfrey, F.R.I.C.S., F.A.I.) & HICKMAN, Surveyors and Valuers, 50 Havelock Road, Hastings. Tel. 6688/9.

Haywards Heath and District.—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

Haywards Heath and Mid-Sussex.—BRADLEY AND VAUGHAN, Chartered Auctioneers and Estate Agents. Tel. 91.

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(*continued on p. xx*)

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Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.
Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.
Worthing.—Patching & Co., Est. over a century. Tel. 5000. 5 Chapel Road.
Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

WARWICKSHIRE

Birmingham and District.—SHAW, GILBERT & CO., F.A.I., "Newton Chambers," 43 Cannon Street, Birmingham, 2 Midland 4784 (4 lines).

WARWICKSHIRE (continued)

Coventry.—GEORGE LOVEITT & SONS (Est. 1843), Auctioneers, Valuers and Estate Agents, 29 Warwick Row. Tel. 3081/2/3/4.
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Leamington Spa and District.—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).
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Sutton Coldfield.—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

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Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.
Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

WILTSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.
Marlborough Area (Wilts, Berks and Hants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers. Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.
Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

YORKSHIRE

Bradford.—NORMAN R. GEE & PARTNERS, F.A.I., 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

YORKSHIRE (continued)

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I., Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).
Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street. Tel. 33991/2.
Leeds.—SPENCER, SON & GILPIN, Chartered Surveyor, 2 Wormald Row, Leeds, 2. Tel. 3-0171/2.
Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.
Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield Tel. 25206. And at 18 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street. Tel. 30429.
Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.
Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.
Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.
Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.
Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.
Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.
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consideration of remoteness of damage. The same conclusion can be reached whichever approach be adopted. The reason for this is that in the ultimate analysis the same question has to be answered by the court. Whether the courts approach cases of negligence by dividing the problem before them into separate issues is really immaterial. This no doubt is done as a matter of convenience. The important matter is that in essence the same question is being answered by the court and to avoid verbal confusion the court should be aware of this.

The author of the letter maintains that there may well be a contractual assumption of the risk by the plaintiff in a case of negligence. It is my contention that in analysing such a problem the more sensible approach would be to say that by so contracting the plaintiff takes himself out of any duty of care which may be owed to him by the defendant. The contract is just a fact which will assist the court in deciding whether there has been negligence.

I cannot possibly accept my critic's comments on the "rescue" cases. Surely he is not suggesting that a moral test should be applied to these cases? The result of any case would depend to a large extent upon the individual judge's concept of morality. I cannot but feel that the author has failed to understand the case of *Haynes* v. *Harwood & Son, supra*. The statement of Professor Goodhart quoted in my article and accepted by the Court of Appeal cannot be interpreted as meaning that the moral duty of the rescuer is important. If it is to the mind of the rescuer and not the mind of the rescued that the court should look, how would it ever be possible to establish negligence?]

Trustee Investments

Sir,—Your contributor "ABC" on 4th March (p. 184) is critical of the intention to exclude from the proposed new list of trustee investments the stocks and shares of companies incorporated outside the United Kingdom.

Trustees who invest abroad are likely sooner or later to be involved in claims for "foreign" death duties that will be expensive and vexatious to discharge. For that reason I welcome the proposed limitation.

W. P. GOODCHILD.

London, E.C.2.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be* brief, typewritten in duplicate, *and accompanied by the name and address of the sender on a separate sheet, together with a* stamped addressed envelope. *Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Will—WIFE'S EXCLUSION OF HUSBAND FROM ALL BENEFIT

Q. Because of matrimonial differences our client has instructed us to prepare a new will depriving her husband of all benefit. She wishes to nullify as far as possible the effects of the Inheritance (Family Provision) Act, 1938, and for this purpose we have advised her to place with the will a statement giving her reasons for omitting her husband. Can any other safeguards be taken, please?

A. A person can evade the Inheritance (Family Provision) Act, 1938, by making a voluntary settlement or by covenanting that her executors will pay a sum after her death so that the net estate is reduced to nil. See Theobald on Wills, 11th ed., p. 101.

Company—PUBLICATION OF NAME OUTSIDE OFFICE

Q. (1) Do you agree that there is no provision in the Companies Act, 1948, requiring registration of an ordinary agreement for purchase of a business for cash by a private company which a company is in its memorandum required to adopt? (2) We have been trying to find the section in the Companies Act, 1948, requiring the notice of the registered office to be placed outside the office. The only section we can find is s. 108 and we suppose it is considered that this section applies to a registered office which may be at a solicitor's office. (3) Do you agree further that the name of the company at its registered office can in fact be shown inside the solicitor's office presumably on the basis that the company's business is carried on in some other room?

A. (1) We agree. Under s. 52 of the Companies Act, 1948, a contract for sale is registrable only where it provides for the allotment of shares fully or partly paid up otherwise than in cash. (2) In our opinion s. 108 applies to the registered office (whether at a solicitor's office or not) because part of the company's "business" is carried on there, in the sense of complying with statutory requirements. (3) The name should be shown *outside* the registered office. If the office is a set of chambers in a larger building, it can be shown outside the chambers, and need not be outside the main building. We do not think it would be a strict compliance to show the name inside the solicitor's office where (as in the usual case) no specific part of the office is allotted to the company.

Jurisdiction—POWERS OF COMMISSIONERS FOR OATHS

Q. The Commissioners for Oaths Act, 1889, s. 1 (2), provides, *inter alia*, that a commissioner "may take any affidavit for the purpose of any court or matter in England." If a would-be deponent presents an informal affidavit stating, for example, that he makes oath that he is not connected with a certain person or that he has lost a certain article, should the commissioner refuse to administer the oath on the grounds that he has no jurisdiction and invite the deponent to make a statutory declaration instead? Should the oath also be refused to: (*a*) The fiancée of an American soldier wishing to swear an affidavit for lodgment with the American authorities as to various personal matters; (*b*) a person wishing to swear an affidavit verifying a claim for sequestered property for lodgment with a foreign government; (*c*) a person, a stranger to the commissioner, wishing to swear an affidavit in proceedings in the Irish courts in which the commissioner is required in the jurat to state that "he knows the deponent"? If the answers to the above questions are in the affirmative, what advice should the commissioner give to the would-be deponent?

A. The powers of commissioners for oaths are contained in ss. 1 and 11 of the Commissioners for Oaths Act, 1889, and s. 1 of the Commissioners for Oaths Act, 1891: see also R.S.C., Ord. 38, r. 6. It is stated in Halsbury's Laws of England, 2nd ed., vol. 31, p. 317, para. 352, that a commissioner may administer any oath or take any affidavit for the purpose of being used in any court in England, but in Oaths and Affirmations, by Boland and Sayer, at p. 14, it is said that the power of a commissioner extends to "any proceeding out of court which requires the services of a commissioner for oaths, but it does not follow in every case where a document has to be sworn that a commissioner has jurisdiction." It seems to us, therefore, that a commissioner has jurisdiction in every "matter in England," unless jurisdiction is expressly excluded (see, e.g., s. 70 of the Representation of the People Act, 1949). If this view is correct, it would appear that a commissioner is entitled to administer the oaths in the circumstances referred to in your original question and also in (*a*) and in (*b*) if the proceedings were brought in "any court . . . in England." With regard to (*c*), the Irish courts will admit affidavits sworn in England even though the jurat does not contain the words "and I know the deponent": *Allaun* v. *Fisher* (1903), 37 Ir. L.T. 22, and *Barnard* v. *Parnell* (1899), 33 Ir. L.T. 171. See also Ord. 38, r. 14 (Irish).

Compensation—PAYMENT FOR LOSS OF FISHING GEAR—SUBSEQUENT RECOVERY OF GEAR—APPLICATION FOR REPAYMENT OF COMPENSATION

Q. Three juveniles take a small fishing boat without the owner's permission for a trip, in the course of which they jettison some of its gear. No proceedings, either civil or criminal, are taken and a payment of £20 is made to the boat-owner by way of compensation for the loss of his gear and the use of it for several weeks.

This sum is accepted by him. Later, rather unexpectedly, the gear is recovered from the sea-bed in a slightly deteriorated state, and the boat-owner takes possession of it, thus having both his gear and the compensation for its loss. An application is made to him to repay the £20, less an allowance for being deprived of the use of the gear for a certain period, or alternatively for the return of the gear, so that it may be sold, but no response is made to this application. What are the rights of the party who paid the compensation on behalf of the juveniles, and what steps can he take to claim those rights?

A. We doubt whether the person who paid the compensation on behalf of the juveniles is entitled to recover either a part of the £20 or the gear. The owner of the gear had a cause of action against the infants and the person who paid the compensation to him gave him £20 in substitution for his legal remedy. Thus the infants' liability in tort was extinguished by accord and satisfaction (cf. *Hirachand Punamchand* v. *Temple* [1911] 2 K.B. 330), and as the abandonment of a claim which turns out to be unfounded is sufficient consideration for the payment of a sum in satisfaction of that claim (see, e.g., *Callisher* v. *Bischoffsheim* (1870), L.R. 5 Q.B. 449), we do not think that the subsequent recovery of the goods renders the agreement in question invalid. Again, as the £20 was paid in substitution for the owner's legal remedy, we do not think that this payment affects his ownership of the gear: see also *A.-G.* v. *Trustees of the British Museum* [1903] 2 Ch. 598, 609.

NOTES AND NEWS

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes and at p. 94, *ante*:—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Cornwall County Council	Liskeard Rural District: modifications to draft map and statement of 23rd March, 1956	28th January, 1960	26th February, 1960
Devon County Council	Axminster Rural District: modifications to draft map and statement of 5th November, 1957	16th February, 1960	21st March, 1960
Hampshire County Council	Winchester Rural District: modifications to draft map and statement of 3rd November, 1953	15th January, 1960	5th March, 1960
Norfolk County Council	Erpingham and Swaffham Rural Districts: modifications to draft map and statement of 16th April, 1957	15th January, 1960	11th February, 1960
Warwickshire County Council	Stratford-on-Avon Rural District: modifications to draft map and statement of 23rd January, 1958	12th February, 1960	11th March, 1960
	Warwick Rural District: modifications to draft map and statement of 3rd April, 1959	12th February, 1960	13th March, 1960

Provisional Map and Statement

Surveying Authority	District covered	Date of notice	Last date for applications to quarter sessions
Cornwall County Council	St. Austell Rural District	28th January, 1960	27th February, 1960

Definitive Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to High Court
Hertfordshire County Council	Baldock, Hitchin, Letchworth, Royston and Stevenage Urban Districts; Hitchin Rural District	12th February, 1960	24th March, 1960
Staffordshire County Council	Bilston, Newcastle-under-Lyme, Tamworth, Tipton and Wednesbury Boroughs: Ambelcote, Brownhills, Coseley, Darlaston, Sedgley, Stone and Willenhall Urban Districts	29th January, 1960	—

OFFICIAL INQUIRIES IN BEING

The following list of current official inquiries (Committees of Inquiry unless otherwise stated) is derived from *Hansard* (*Commons*), 3rd March, 1960, *Written Answers*, cols. 169–174:—

Date of Appointment	*Subject*	*Chairman*
October, 1956 ..	Children and Young Persons ..	The Rt. Hon. Viscount Ingleby.
January, 1957 ..	Radiological Hazards to Patients	Lord Adrian, O.M.
December, 1957 ..	Legal Aid in Criminal Cases (Scotland)	The Hon. Lord Guthrie.
June, 1958	Drug Addiction	Sir Russell Brain, Bt.
June, 1958	Business of the Criminal Courts	Mr. Justice Streatfeild.
June, 1958	Grants to Students	Sir Colin Anderson.
September, 1958 ..	Human Artificial Insemination	The Earl of Feversham, D.S.O.
May, 1959	Probation Service	Sir Ronald Morison, Q.C.
July, 1959	Consumer Protection	Mr. J. T. Molony, Q.C.
July, 1959	Operation of the Truck Acts, 1831 to 1940	Mr. David Karmel, Q.C.
August, 1959 ..	Scottish Licensing Law ..	The Hon. Lord Guest, Q.C.
November, 1959 ..	Levy on Betting on Horse Races	Sir Leslie Peppiatt, M.C.
December, 1959 .. (Royal Commission)	Police	The Rt. Hon. Sir Henry Willink, Bt., M.C., Q.C.
January, 1960 ..	Issue of subpœnas to secure attendance of witnesses and the production of documents before disciplinary tribunals	The Rt. Hon. Viscount Simonds.
January, 1960 ..	Company Law	The Rt. Hon. Lord Justice Jenkins.

Honours and Appointments

Mr. Norman Stayner Marsh, M.A., B.C.L., barrister-at-law, has been appointed the first director of the British Institute of International and Comparative Law. Mr. Marsh will take up his duties on 1st October, 1960, at the new headquarters of the institute at 1 Temple Gardens, Temple, E.C.4. (CEN 7559.)

Mr. Peter Nickson, solicitor, of High Wycombe and Beaconsfield, and coroner for many years of South Bucks, has been appointed honorary Recorder of High Wycombe, in succession to the late Mr. W. A. Fearnley-Whittingstall, Q.C.

Mr. Henry Edwin Salt, Q.C., has been appointed Chancellor of the County Palatine of Durham.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

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PUBLIC NOTICES

COUNTY OF ESSEX

Competent conveyancing clerk required. Some supervision. Salary according to qualifications and experience but will not exceed £880 a year. Five-day week of thirty-eight hours; sick pay; superannuation; canteen; holiday—eighteen working days, plus three days after ten years' service. Canvassing forbidden. Applications in own handwriting, stating age, education, qualifications, experience and names and addresses of three referees, should be sent as soon as possible to County Clerk, County Hall, Chelmsford.

BUSHEY URBAN DISTRICT COUNCIL

ASSISTANT SOLICITOR

Applications are invited for the above appointment. Salary within special scale, viz.: £835–£1,165 per annum (plus London Weighting), according to experience. Previous local government experience not essential, but applicant should have good knowledge of conveyancing and be able to undertake advocacy. March Finalists will be considered.

Applications, with full particulars and names of two referees, to me not later than 23rd March, 1960.

C. G. EVERATT,
Clerk of the Council.

Council Offices,
Rudolph Road,
Bushey,
Herts.

CHICHESTER RURAL DISTRICT COUNCIL

ASSISTANT SOLICITOR

Applications are invited for this appointment on salary Grade A.P.T. V (£1,220—£1,375).

Assistance with housing given, if required.

Apply to the undersigned for full particulars. Closing date 21st March, 1960.

G. T. GILES,
Clerk of the Council.

Pallant House,
Chichester,
Sussex.

BOROUGH OF BEBINGTON

(Pop. 51,050)

ASSISTANT TOWN CLERK

Experienced solicitors are invited to apply for this appointment. The salary will be fixed within Grade V A.P.T. (£1,220–£1,375 p.a.). Further details and an application form can be obtained from me, and applications must be received by me not later than Saturday, 26th March. The Council operate a five-day week. Suitable housing will be found for the successful applicant, if married and in need of housing.

G. CHAPPELL,
Town Clerk.

Town Hall,
Bebington,
Wirral.

BOROUGH OF BEXLEY

ASSISTANT SOLICITOR

Commencing salary £1,000 per annum rising by annual increments of £40 and £45 to £1,165 per annum, plus "London Weighting" allowance. Previous local government experience is not essential.

Forms of application and conditions of appointment are obtainable from the undersigned to whom completed forms must be returned by 28th March, 1960. The Council may be prepared to assist in the provision of housing accommodation. Canvassing will disqualify.

ARTHUR GOLDFINCH,
Town Clerk.

Council Offices,
Bexleyheath,
Kent.

URBAN DISTRICT COUNCIL OF CHESHUNT

APPOINTMENT OF LAW CLERK
(UNADMITTED)

Applications are invited for the above-mentioned appointment in the Legal Section of the Clerk's Department at a salary in accordance with Grade A.P.T. I/II (£610—£880 per annum plus appropriate London Weighting).

Applicants should have had good experience in conveyancing and be able to act with only general supervision.

Applications, giving details of age, experience, qualifications and the names and addresses of two referees, should be forwarded to the undersigned not later than 23rd March, 1960.

Canvassing disqualifies and applicants must state whether they are related to any member or senior officer of the Council.

HOUSING ACCOMMODATION WILL BE AVAILABLE TO THE SUCCESSFUL APPLICANT, IF REQUIRED.

G. S. NEWNHAM,
Clerk of the Council.

Manor House,
Waltham Cross,
Herts.

CITY OF LEEDS

ASSISTANT SOLICITOR

Applications are invited for this appointment at a salary within scale APT. IV £1,065–£1,220.

The person appointed will be required to conduct prosecutions on behalf of the police and the corporation and to assist generally in the work of my office.

Previous local government experience not essential.

The appointment is subject to the Local Government Superannuation Acts, 1937–1953, and to a medical examination.

Applications, with details of age, date of admission, qualifications and experience, and with the names of two referees, must reach me by the 31st of March, 1960.

ROBERT CRUTE,
Town Clerk.

Civic Hall,
Leeds.

CORPORATION OF MANCHESTER

Manchester Town Clerk's Department.—SENIOR CLERK required for prosecutions work, graded A.P.T. IV (£1,065–£1,220 per annum). Applicants must be experienced in the preparation of cases for the Magistrates' Court and the higher courts. Applications giving particulars of age, education, qualifications and experience should be sent to the Town Clerk, Town Hall, Manchester, 2, by 21st March, 1960.

METROPOLITAN BOROUGH OF SOUTHWARK

Applications are invited for the appointment of LEGAL CLERK on the permanent establishment of the Town Clerk's Department at a salary within Grades A.P.T. II–III of the National Joint Council scales, i.e., £795 per annum rising to £1,095 per annum (less £10 per annum if under 26 years of age). Commencing salary according to experience.

Candidates should have had general legal experience, including a practical knowledge of Conveyancing. Previous local government experience would be an advantage, but is not essential. Unusual variety of work and opportunity to widen experience.

Council's Conditions of Service and Superannuation Scheme apply. Medical examination. No housing provided. Canvassing will disqualify.

Application forms from the undersigned. Closing date 28th March, 1960.

E. J. PITT,
Town Clerk.

Southwark Town Hall,
(near Elephant & Castle
Underground Station),
Walworth Road, S.E.17.

APPOINTMENTS VACANT

REIGATE-SURREY.—Old-established firm require immediately Managing Clerk for Conveyancing and Probate; please write stating age, qualifications, experience and salary required.—Box 6207, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GUARDIAN ASSURANCE CO. LTD. invites applications for appointment in its Fidelity and Contingency Department. Applicants should be not more than twenty-five years of age and should have conveyancing and probate experience. Attractive salary scale; non-contributory pension scheme; staff profits scheme; luncheon club.—Apply in confidence to General Manager, 68 King William Street, London, E.C.4.

MID WALES Spa.—Wanted, Managing Clerk for general practice. Salary by arrangement.—Box 6429, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTH WESTMORLAND.—Solicitor required as assistant in general practice including litigation, conveyancing and probate and also with public appointment. Opportunity to gain experience in magisterial law. Good prospects for right man. Salary in accordance with qualifications and experience.—Box 6430, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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APPOINTMENTS VACANT—*continued*

MID-SURREY.—Solicitors require Junior Conveyancing Clerk, male or female. Salary: £10–£12 p.w.—Box 6431, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MID-SURREY Solicitors require Conveyancing Clerk, male or female. Might suit young admitted Solicitor. Starting salary £600–£700.—Box 6432, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by West Riding practice, conveyancing, probate and general matters, opportunity for advocacy if desired.—Box 6433, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk required by Solicitors in Orpington, Kent. Conveyancing and probate. Good salary and conditions.—Box 6434, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED conveyancer, admitted or unadmitted, capable of handling without supervision substantial volume of conveyancing, required by Cardiff solicitors; commencing salary up to £1,500 and provision of car.—Box 6435, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG assistant solicitor with all-round experience required for expanding firm, N.W. suburbs; emphasis on matters other than conveyancing; profit-sharing arrangement ultimately.—Box 6436, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EAST HANTS.—Required immediately: (A) Managing clerk, chiefly for conveyancing and probate, and (B) Junior conveyancing and probate clerk; excellent prospects; write stating age, experience and salary required.—Box 6437, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required by large City firm to work personally with partners on important matters for commercial and private clients; salary around £1,500 per annum, according to experience and qualifications; good prospects.—Write with full details about education, articles and experience to Box 6438, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS having offices in Haywards Heath and East Grinstead require assistant solicitor or conveyancing managing clerk (male or female) to be based in Haywards Heath; good salary and car allowance; bonus scheme.—Write Box 6439, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT solicitor required for practice in Yorkshire, principally to manage branch office; applicants should have had some experience since admission and be prepared to undertake advocacy; prospects of partnership.—Apply Box 6440, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require unadmitted Probate Clerk.—Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NOTTINGHAM.—Conveyancing Clerk required, capable of working with minimum supervision.—Write with particulars to Whitworth & Eccleston, 17 Bridlesmith Gate, Nottingham.

CLERK

Hire Purchase Finance Company, West London area, requires additional clerk, preferably with some experience in litigation. Experience of hire-purchase an advantage. Good working conditions, staff restaurant, contributory pension scheme. Commencing salary not less than £700 according to experience. Write stating full details of experience, to Box 6418, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SHREWSBURY.—Leading firm of solicitors require young probate and conveyancing clerk with some experience to train as personal assistant to senior partner; good prospects; salary by arrangement.—Apply giving age and experience to Box 6446, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors require Company, Probate, Trust and Conveyancing Managing Clerk, admitted or unadmitted. Salary £1,350 per annum. Hours 9.30 a.m. to 5.30 p.m. Monday to Friday.—Apply Box 6419, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SENIOR LAW CLERK

CHIEF SOLICITOR'S DEPARTMENT, BRITISH TRANSPORT COMMISSION.

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Commencing salary £875 rising to £1,034 p.a.

Apply, stating age, qualifications, experience, present position and salary to Chief Solicitor, British Transport Commission, 21A John Street, London, W.C.1.

LEGAL Assistant.—Insurance Company, London, has opening in legal department for a young assistant preferably with experience in probate or conveyancing, admitted or unadmitted; good prospects and pension.—Apply Box 6447, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXETER.—Solicitor required for medium-sized but very active general practice; 2 to 3 years' experience in litigation, divorce and advocacy essential; general knowledge of conveyancing required; salary up to £1,000.—Full details of education, experience, etc., to Box 6448, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BIRMINGHAM Solicitors require admitted or unadmitted Conveyancing assistant. Good salary and prospects of increases. Five-day week.—Box 6449, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley; willing to undertake advocacy.—Box 6396, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

REIGATE, SURREY.—Old-established firm require immediately Assistant Solicitor for general work but principally Conveyancing and Probate; please write stating age, qualifications, experience and salary required.—Box 6208, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Manager (admitted or unadmitted) required for S.E. London Solicitors; 9.30 to 5.30 and alternate Saturdays. Own room and typist. Write stating salary required.—Box 6413, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

TWO assistant solicitors required for conveyancing and litigation respectively. Able to work without supervision or with slight supervision. 5-day week. Salary by arrangement. Write stating age and experience. Marcan & Dean, 20 Victoria Street, S.W.1.

WEST-END old-established firm require immediately Assistant Solicitor for general work but principally conveyancing and probate, with a view to early partnership. Please write stating age, qualifications, experience and salary required.—Box 6414, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Clerk, not over 40, required by West End solicitors to undertake large volume of work in busy office. Four figure salary offered to keen and experienced man. L.V.'s, 5-day week and pension scheme. Write stating age to Box 6415, Solicitor's Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ALDERSHOT DISTRICT.—Young solicitor (newly qualified considered) immediately required by principal, to act as assistant in conveyancing and litigation (with advocacy) in all round general practice. Supervision if required. Initiative more important than experience. Valuable experience in most branches can be gained. Twelve months engagement or permanency, according to mutual relationship. Write Box 6416, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required urgently by West Surrey firm; conveyancing, probate—some advocacy an advantage. Newly-admitted man considered; minimum salary £850.—Box 6417, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY solicitors require experienced conveyancing clerk; hours 9.30—5, no Saturdays; pension scheme. Please state age, experience and salary required.—Box 6319, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk required by City Solicitors. Hours 10 a.m. to 5.30 p.m. No Saturdays.—Apply, giving age and experience and salary required to Box 6349, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Solicitor required for London Suburban Conveyancing practice—must be hard worker and capable of acting independently—good prospects of partnership.—Box 6354, Solicitors' Journal, Oyez House, Breams Buildings, E.C.4.

ASSISTANT Solicitor required for busy London Practice; first class partnership prospects; good commencing salary.—Write Box 6407, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

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APPOINTMENTS VACANT—*continued*

CONVEYANCING Managing Clerk, admitted or unadmitted, required for London South West Suburb—good prospects for advancement for keen and hard worker—please state age, experience and salary required.—Box 6355, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required for general practice in North Midlands town.—Box 6398, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCER (Preferably unadmitted) required by S.W. Middlesex firm. Commencing salary £1,250. Good prospects. Pension Scheme. Box 6405, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required in Legal Dept. at Birmingham Headquarters of large industrial group in the engineering industry. The post would best suit a young recently admitted man interested in applying legal qualification to the practical problems of industry.

Applicants must produce evidence of thorough practical experience of conveyancing as numerous freehold/leasehold properties are involved. There would also be opportunity to gain experience in Company and Commercial Law. All applications treated in strict confidence. Apply giving full details of age, education, experience, positions held, salary required and date available to Box 6406, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SENIOR Common Law Clerk to take charge West End department, urgently required; specialised knowledge insurance claims desirable; good salary; also REQUIRED Conveyancing and General Senior Clerk for branch office near Ilford.—Full details in each case, please, to Box 6408, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BUSY Partner requires able Assistant Solicitor for general work. Good prospects of partnership and pleasant offices near Waterloo. Good salary paid according to experience.—Box 6454, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROBATE Clerk with some conveyancing required for South London Solicitors. Excellent prospects for the right man and good salary and conditions offered.—Box 6455, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

RUISLIP Solicitors require Conveyancing Managing Clerk. Salary £1,000–£1,200. Financial assistance for house purchase available. Please write stating age and experience.—Box 6456, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

CHIEF cashier (36) requires position Bath, Bristol area; fully conversant all books of account and cashiers' duties; experience staff control and office management; some knowledge Income Tax and Probate.—Box 6441, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR (25), LL.B. (Lon.), admitted December, 1958, experience common law, matrimonial, conveyancing, criminal, county court and magistrates' court; main interest common law; seeks position with prospects in Midlands or North.—Box 6442, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, with over thirty years' practical experience in all branches (including advocacy in county and magistrates' courts), seeks suitable employment in London area or South-West Suburbs and Surrey or Middlesex.—Box 6443, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ACCOUNTANT.—Early thirties and with extensive experience of solicitors' accounts, seeks responsible position with a firm of provincial solicitors in South, South-West or West of England. Knowledge of simple probate and personal income tax. Starting salary £800–£900. Please write Box 6451, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, aged 28 years, Public School, etc., seeks position in Birmingham, Coventry or Leicester area with immediate prospects of a partnership. No capital available. Minimum salary during probationary period £1,080 p.a.—Box 6452, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk (unadmitted) seeks change. Experienced Conveyancing, Probate, Trusts, knowledge of other branches. Age 52. Details please of employment, working conditions, salary offered. Permanent post essential. Not London.—Box 6453, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PRACTICES AND PARTNERSHIPS

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THE Costs Department of The Solicitors' Law Stationery Society, Ltd., is available to the profession for the prompt preparation of all BILLS OF COSTS by expert draftsmen.—For full details apply The Manager, Costs Department, Oyez House, Breams Buildings, Fetter Lane E.C.4 (CHAncery 6855.)

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